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ABSTRACT

This document contains several essays on topics of interest to researchers of rehabilitative efforts. The subjects covered include an historical look at chronic delinquents and their treatment programs; a review of West European programs; legal constraints on intervention; a review of evidence concerning biological contributions to criminality and the treatments they suggest; school-based interventions; and a cost-benefit model for comparing early intervention with other methods of crime control. An "Introduction to the Juvenile Rehabilitation Reader" by Peter W. Greenwood is followed by nine articles: (1) "Identifying and Treating Serious Juvenile Offenders: The View from California and New York in the 1920s," by Steven Schlossman and Alexander Pisciotta; (2) "Cycles of Reform in Youth Corrections: The Study of Borstal," by Gordon Hawkins and Franklin Zimring; (3) "Western European Perspectives on the Treatment of Young Offenders," by Gordon Hawkins and Franklin Zimring; (4) "Changing Legal Paradigms in Juvenile Justice," by Marc Miller; (5) "Legal Constraints on Intervention Programs in Public Schools," by Marc Miller; (6) "The Biological Bases of Criminal Behavior," by Michelle Freier; (7) "Treatment Interventions Implied by Biological Factors," by Katherine Van Dusen; "(8) "School-Based Strategies for Delinquency Prevention," by Jackie Kimbrough; and (9) "The Economics of Early Intervention vs. Later Incarceration," by C. Peter Rydell. References and tables are given in some articles. (ABL)

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PREFACE

This Note contains several articles commissioned as part of a review and reassessment of the state of rehabilitation programming for chronic juvenile offenders. Each article explores an aspect of theory or practice that had been slighted in the past, or where encouraging developments had recently taken place. The collection should be of interest to scholars, practitioners, and policymakers who are concerned about developing or supporting more effective rehabilitation efforts.

A companion report, *One more Chance: The Pursuit of Promising Intervention Strategies for Chronic Juvenile Offenders,* (R-3214-OJJDP), by Peter Greenwood and Franklin Zimring, presents a more focused discussion of promising intervention strategies and how they might be applied. Both documents were prepared under Grant #83-JS-AX-0012 from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

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CHAPTER I

INTRODUCTION TO THE JUVENILE REHABILITATION READER

PETER W. GREENWOOD

1985

The past decade has seen an unprecedented shrinkage in what at one time was seen as the primary function of juvenile courts--the rehabilitation and reform of juvenile delinquents. On one hand, the jurisdiction of juvenile courts in dealing with troublesome but non-criminal juvenile behavior is being rapidly circumscribed as one state after another moves to divest the court of its powers over so-called status offenders. On the other hand, interest in rehabilitating older, more serious or chronic juvenile offenders has given way to competing concerns about punishment and community protection. The average time juveniles serve in most state training schools is steadily increasing, and the number of juveniles waived to criminal courts is also on the rise.

Traditionally, "the best interests of the minor," which are generally thought to be synonymous with the goals of rehabilitation, have played a central role in juvenile justice proceedings. Rehabilitation was "the beef." Remove concerns about rehabilitation from juvenile court proceedings and it becomes difficult to distinguish them from their criminal court counterparts.

The declining fortunes of the rehabilitative enterprise has many causes: abuses of power and overreaching authority by judges who attempted to impose their standards of acceptable childhood behavior and morals, and by correctional authorities bent on improving institutional control; excessive proselytizing and over-promising by academic theoreticians and ambitious practitioners; escalating costs for treatment; declining sympathy for offenders; and the fact that rehabilitation is sheer hard work. Yet even with all these known deficiencies, the alternative of a juvenile justice system without rehabilitation is not a pleasant scene to ponder. Recidivism rates for chronic offenders remain distressingly high. Without the impetus and motivation provided by rehabilitative goals, juvenile correctional facilities and staff are likely to drift even closer to a miniaturized adult prison model.

The articles in this report were commissioned as part of a study to determine whether rehabilitation was really dead, or possibly just hibernating. A companion volume (Greenwood and Zimring, 1985) presents the principal findings of this study, which do indeed hold out promise that the quality of rehabilitation programs can and should be improved. The articles contained in this volume describe analyses that were used to arrive at that conclusion and present a much more detailed review of the issues they cover.

These papers proceed in many directions that may at first seem only tangentially linked. Their common thread is that they attempt to explore questions central to the issue of why interest in and knowledge about rehabilitation of serious juvenile offenders is in its current state of confusion and disarray.

Schlossman and Pisciotta tell us what serious juvenile offenders looked like and how they were treated 60 years ago. Their data come from records and case samples drawn from two preeminent, but quite different, juvenile institutions of the 1920s--the Whittier School for Boys in California and the House of Refuge in New York City. Not surprisingly, serious juvenile offenders during the 1920s look a lot less serious than the inmates of juvenile training schools today. A much smaller percentage were committed for crimes of violence and a much higher proportion for status offenses and minor theft.

In the Whittier school we see the efforts of Fred Nelles, a pragmatically oriented businessman without any previous social work training or background, who was appointed to head that institution in 1912. Nelles scoured the country to find concepts and programs he could apply at Whittier. His research led him to exclude what he called "the feebleminded" and the " habitually delinquent" so he could concentrate on the middle group he felt held the most promise. He conceived of his institution as part of the broader public education system rather than the state prison system. He also pioneered many concepts that are still in use today such as: a three-month quarantine, observation, and diagnostic period at intake; using married couples as house parents; summer camping programs; and the involvement of practicing tradesmen as vocational instructors and role models. Surprisingly, given his pragmatic orientation, Nelles devoted almost no attention to what happened after the juveniles left his care.

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In contrast, the New York House of Refuge chose to adopt a strict military model based on the private military schools of the day. Academics were not particularly emphasized. Vocational training and discipline were the central focus. Job placement upon release was the primary goal.

One of the primary lessons provided by this paper has to do with the importance of evaluative research. In each instance the directors of these two facilities believed that they had developed unique and effective programs; unfortunately, there is no way to validate or refute their claims. They never made systematic efforts to determine the future behavior of their graduates. Because of this failing the conscious efforts of the staff of these institutions contributed little to the development of correctional expertise, despite the ambitions of their directors.

The Hawkins and Zimring papers take us beyond the American experience to look at programs in Western Europe. The most interesting story to emerge from their search is the story of the Borstal in England. Begun at the turn of the century as a specialized institution for youthful offenders in lieu of prison, the English Borstal enjoyed a lengthy period of apparent success before suffering a sharp decline, after the Second World War, and eventual termination in 1980. During the 1920s the Borstal, somewhat like Whittier, was revamped to reflect the style and programs of an English public school. During the 1930s only 30 percent of all Borstal graduates were reconvicted within two years after their release. By 1950 this reconviction rate had climbed to 50 percent and by 1964 to 64 percent. The story of the Borstal shows us that effective programs are possible but that effectiveness does not necessarily persist.

The second Hawkins and Zimring paper documents the fact that declining faith in the rehabilitative ideal and research on juvenile delinquency is not a uniquely American phenomenon. European conferences that examine youthful offenders consistently bemoan the lack of proven intervention strategies and recommend expansion or research. Where European countries differ from American jurisdictions is in the effects that this declining faith in rehabilitation has on the rest of the system. European countries by and large have not been moving toward the more "just deserts"-based/punishment orientation that is becoming evident in American juvenile systems.

The two legal reviews by Marc Miller show how the powers of the two primary public institutions that deal with delinquent and pre-delinquent youths, juvenile courts and public schools, have been recently constrained by the courts. These articles provide a detailed description and analysis of the pertinent cases. The first paper reviews the series of cases proceeding from Kent and Gault that have given juveniles most of the procedural protection afforded adults. The second paper reviews the line of constitutional school cases dealing with racial integration, integration of the sexes, and education of handicapped children in order to discern the line of judicial reasoning that will govern attempts by schools to deal with troublesome but not yet delinquent behavior. These cases limit the amount of labeling and tracking that can take place in schools and set a floor on the minimum level of special services that schools may be required to provide for special categories of children.

The paper on biological contributions to criminal behavior by Michelle Freier reviews what has recently become an extremely controversial topic. Sociologically or psychologically oriented researchers have questioned the appropriateness and relevance of any research in this area and have called into question the motives of those who choose to pursue it.

Although the concept that "biology is destiny" is clearly an overstatement of the causal relationships that are likely to be found in this area, some relationships do in fact exist. Freier's paper provides a thorough yet readable summary of the leading theories, research methods, and study findings on this topic. She also provides us with a useful standard against which to measure progress in this area by comparing it with research in a similar but better developed field--that of the relationship between biology and schizophrenia. In addition to receiving more scholarly and clinical attention compared with research on criminal behavior, research on schizophrenia has benefited from the fact that the phenomenon of interest is more subject to observation and objective measurement; and there are fewer intervening influences between the neurological conditions associated with the disease and the behavior that defines it.

The paper by Katherine Van Dusen, which follows Freier's, describes how knowledge of physiological endowments might be used in selecting appropriate interventions for either delinquent behavior or possibly poor performance in school. The main point of this article is to show that the physiological factors associated with a high risk of later delinquency suggest the same types of programming associated with what were thought to be more social or psychological causes of crime. Biological factors that predispose some youngsters toward a higher risk of sustained delinquency are no more suggestive of biological/physiological interventions than any other types of predictive factors

The legal review by Marc Miller argues that next to the juvenile court, public schools must be the primary public agency involved in delinquency prevention. The paper by Jackie Kimbrough shows what public schools can accomplish--if they are up to the task.

In recent years it has become fashionable to write off the schools as potential agents of social change. Mired in their increasing problems of declining public support, less motivated students, and less qualified staff, many have concluded that schools can do little to improve the achievement or prospects of inner-city poor children. Kimbrough's paper reviews two areas of educational research challenging this bleak perspective. Research on "safe schools" shows what inner-city schools can do to reduce student discipline and attendance problems. Research on "instructionally effective schools" shows how a small number of inner-city schools have been able to improve both the attendance and academic performance of poor children. In both instances success seems to require extremely hardworking and talented administrators and well-coordinated and ambitious programs--ingredients that are not always in good supply. Nevertheless, the research does provide a basis for thinking about how schools might do more to curb delinquency than they currently do.

The last paper in this volume is the one that deals most directly with the central question of our research--the potential role of rehabilitation in reducing the criminality of chronic juvenile delinquents. C. Peter Rydell describes a preliminary statistical and economic model that can be used to compare the effectiveness of various types of intervention strategies in their ability to reduce crime rates.

In this model effectiveness is defined in its narrowest sense of cost efficiency. Interventions are described in terms of their cost per subject treated, reduction in subsequent individual rates of offending, and stage in the career at which they are applied. Rydell uses the model to show that even fairly expensive rehabilitation programs can be cost effective if they reduce individual offense rates by only about one-third.

This volume should not have a very long, useful shelf-life. We would hope that it becomes obsolete in only a couple of years. Every one of the topics covered by this volume deserves to be expanded and pursued in greater depth. Nevertheless, we are not so naive as to believe that this is likely to be an immediate outcome. Research agendas have a way of meandering haphazardly unless there is an extremely strong political consensus for a particular issue. We do not believe that rehabilitative programming has reached that level of political interest, nor do we believe that the issues are even well understood.

REFERENCE

Greenwood, Peter W., and Franklin E. Zimring, *One More Chance: The Pursuit of Promising Intervention Strategies For Chronic Juvenile Offenders,* The Rand Corporation, R-3214-OJJDP, 1985.

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CHAPTER II

IDENTIFYING AND TREATING SERIOUS JUVENILE OFFENDERS: THE VIEW FROM CALIFORNIA AND NEW YORK IN THE 1920s

by

Steven Schlossman

and

Alexander Pisciotta

We thank Mary Lou Foltz for her enthusiastic research assistance during the course of this project.

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I. INTRODUCTION

This essay develops several new historical perspectives on policies concerning the serious juvenile offender. Focusing on the 1920s, we examine select data from two states dealing with the behavioral characteristics, legal processing, and treatment of those juveniles (under age 18) whose offenses were considered sufficiently serious to warrant punishment by incarceration in state training school. The data analysis is exploratory and far from exhaustive. Nonetheless, it does provide an empirical baseline upon which to build more elaborate historical investigations and to suggest tentative comparisons between past and present.

The historical data make it possible to address such questions as: How does the basic profile of the serious juvenile offender today differ from his counterpart in the early 20th century? Has his legal processing by the courts changed in significant ways? How much influence (if any) do the theories of effective programming that guided correctional treatment over a half century ago exert on practitioners in the field today? Answers to these questions should clarify the nature of change in serious juvenile offender behavior patterns and help isolate what is new and not new among current proposals for their identification, treatment, and punishment.

Historical research on American juvenile corrections is in a primitive state. To be sure, several books and articles have chronicled aspects of juvenile justice history, including the rise and development of correctional facilities. However, these works have mainly examined the 19th and early 20th centuries; we know almost nothing about institutional developments following World War I. There has also been no systematic comparative analysis of treatment philosophies and programs. Differences among institutions have been blurred in order to create a simplified general picture that may slight significant variations from place to place and over time in correctional procedures and designs. Finally, the clientele of juvenile correctional institutions has been largely ignored. We currently have no way to determine how inmate characteristics may have differed from state to state and how patterns of delinquent behavior may have changed over time.[1]

We decided to examine a period sufficiently distant from our own that major differences were likely to stand out sharply, yet not so distant as to seem irrelevant to modern-day concerns. We chose the 1920s for several reasons. First, by the 1920s juvenile courts and training schools had become well-established institutions in virtually all states. Second, the 1920s, like our own era, witnessed an alleged "crime wave" that was attributed largely to the depredations of late adolescent, minority group males (i.e., immigrant or of immigrant parentage). And third, to have chosen a fifty year rather than a sixty year hiatus would have placed the study in the anomalous Depression decade.

Inmate records from state training schools, in our judgment, provided the best available body of systematic information. We identified several states in the west, midwest, and east with potentially useful databases. To link our study with recent research on the genesis of criminal career patterns, we searched particularly for institutional data that included a juvenile's offense history. Inmate records from two correctional institutions--the Whittier State School in California and the House of Refuge in New York--best satisfied our needs.

Both facilities were long-established state training schools that drew their clientele disproportionately from each state's leading metropolis. We selected approximately a 100-case sample from each institution. To minimize distortion due to variations by county in judicial commitment procedures, we limited the sample to inmates sent from Los Angeles and New York City. Data collection was cumbersome and time-consuming. Nearly all information--including lengthy narrative case reports--had to be copied on site in archives in Sacramento and Albany, by hand, and in pencil, to conform to archive regulations.

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[1] Many additional deficiencies in available scholarship on American juvenile corrections are not addressed here--most notably, perhaps, the tendency to emphasize issues of ideology rather than the implementation of treatment programs. For implementation analyses, see Steven Schlossman, *Love and the American Delinquent,* The University of Chicago Press, 1977, Chs. 5 and 6; and Alexander Pisciotta, "The Theory and Practice of the New York House of Refuge, 1857-1935," Ph.D. dissertation, The Florida State University, 1979.

The Whittier School and the House of Refuge were recognized as the principal juvenile correctional institutions in California and New York. However, both states incarcerated their *most* serious late adolescent offenders at other public institutions--principally the Preston School of Industry and San Quentin in California, and the Elmira Reformatory and Sing-Sing in New York. Because the median commitment age at these institutions was over 18, most inmates were sent from criminal rather than from juvenile courts, and data from these institutions were less readily accessible for the 1920s, we decided not to include them in the present analysis. Clearly, future research will have to examine the juveniles under age 18 at these institutions and determine how their behavior, legal processing, and treatment programs differed from those at Whittier and the House of Refuge.

II. THE SERIOUS JUVENILE OFFENDER IN 1920S CALIFORNIA AND NEW YORK: A COLLECTIVE PROFILE

Several important differences between the Los Angeles and New York inmates were readily predictable. On the basis of previous historical and sociological research, as well as the city's demography, we expected that the Los Angeles youth would be overwhelmingly native-born, white, Protestant, and of American parentage, with a disproportionate number of Hispanic youth because of an upsurge in Mexican immigration to Southern California following World War I. For similar reasons, we expected that the New York offenders would be overwhelmingly native-born, Catholic, and of southeastern European parentage, with a disproportionate number of black youth because of migration of blacks from the south just before and after World War I. The data upheld these expectations. We also correctly expected that auto theft would be more common in Los Angeles because of the city's poor public transportation system and its high density of auto ownership. A juvenile in New York could quickly leave the scene of a crime or run away from home and gain anonymity by hopping a ride on a subway or bus, but in Los Angeles he was more inclined and had greater opportunity to steal a car to achieve the same goals.

We did not expect that there would be a large age difference between the Los Angeles and New York boys sent to state training school (see Table 2.1), but the differences were substantial: At the Whittier School, the mean age at committal was 13.4; whereas at the House of Refuge, the mean committal age was 15.5. In California, 47 percent of the inmates were age 13 or younger; in New York, the same age group constituted only 9 percent of the inmates. By contrast, in California only 7 percent of the inmates were over age 16 on committal; in New York, 16 and 17 year olds accounted for 56 percent of those committed.

These findings raise important questions regarding variations in early 20th century judicial practice and legal definition of serious juvenile crime. How the age difference between inmates in California and New York might explain, or fail to explain, variations in delinquent conduct, legal processing, and correctional treatment is an issue that

Table 2.1

AGE OF JUVENILE ON COMMITMENT
(% of sample)

Age	Whittier State School (N=100)	House of Refuge (N=107)
9	2	0
10	4	0
11	7	0
12	10	4
13	24	6
14	34	15
15	12	22
16	5	30
17	2	30
	Mean = 13.37	Mean = 15.48
	Median = 14.1	Median = 16.25

must be systematically addressed in future research. Until it can be determined whether California and New York typified two different nationwide patterns, the data must be used cautiously to generalize about state training school inmates in the 1920s.

It might be predicted that the New York youth, being two years older, were likely to be committed for more serious crimes than their California counterparts, and that more California than New York youth were likely to be committed for status offenses (truancy, running away, incorrigibility). To determine whether this was true was no simple task. At the House of Refuge, the official offense listed for nearly 50 percent of the inmates was the nondescript label of "delinquent" (see Table 2.2). The next most often listed offense, 25 percent, was petty larceny. Dare we assume that the courts employed the "delinquency" label only to describe children who were status offenders? If so, the older House of Refuge inmates would appear to be less serious offenders than the younger boys at the Whittier School. At Whittier, only 37 percent of the inmates were listed officially as status offenders (see Table 2.2); the next most often listed offense, burglary, was 24 percent.

Table 2.2

OFFICIALLY LISTED CHARGE AGAINST JUVENILE
(% of sample)

Charge	Whittier State School (N=104)	House of Refuge (N=109)
Delinquent/status offense	36.6	48.6
Stealing Petty and grand larceny Auto theft Burglary and possession of burglar's tools Unlawful entry	53.8	34.9
Unlawful possession of firearms	0	6.4
Transfer from other correctional institution	0	5.6
Unlawful possession of drug	0	2.8
Assault	1.0	1.8
Rape	1.9	0
Misdemeanor	1.9	0
Forgery/bad checks	2.9	0
Malicious mischief	1.0	0
Robbery	1.0	0

Careful investigation of inmate files revealed that in both California and New York, the officially listed offenses were often deceptive. In many cases, they bore little relation to the immediate offense for which the youth was (at least nominally) committed. At the House of Refuge, the label "delinquency" generally obscured the fact that a youth had committed a criminal offense immediately before his arrest and commitment. At the Whittier School, the official charge generally referred either to the first offense on which a child had initially come to judicial attention or bore no discernible relation to the offense that had preceded commitment. We therefore decided to determine for ourselves, from narrative case descriptions, the immediate offense that had preceded judicial commitment. From this analysis, a different collective portrait of inmates at the two institutions emerged, one that both confirmed and challenged what might be expected from the two-year average age difference of inmates.

At the House of Refuge, only 12 percent of the inmates were actually committed for a status offense (see Table 2.3). The "delinquency" label was thus highly misleading; as far as we could tell, it was applied with no consistency toward particular offenses. Petty larceny was the next most often committed offense, at 28 percent, with burglary third at 15 percent. If we group together the various forms of attempted and actual stealing (not including robbery)--petty larceny, burglary, unlawful entry, grand larceny, possession of burglar's tools, auto theft--the proportion of inmates who stole or tried to steal was 55 percent (see Table 2.3). Personal attacks--such as robbery, rape, incest, sodomy, and assault--accounted for less than 10 percent of the inmates' prior offenses.[1] By today's standards, then, the average New York City youth sent to state training school was hardly a heavyweight offender, at least according to his immediate prior offense. He was clearly no innocent: He had committed a criminal rather than a status offense. If he were over age 18, he could have been tried in criminal court and sent to prison.

At Whittier, there was little overall difference between the officially listed and actual proportion of inmates committed for status offenses (although the categorization of individual youth often changed). Of Whittier's inmates, 34 percent, or approximately triple the proportion at the House of Refuge, committed a status offense before commitment (see Table 2.3). The lower average age at commitment in California was thus paralleled by a substantially larger proportion of status offenders. However, at Whittier, as at the House of Refuge, stealing was by far the most common offense: 59 percent of the Los

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[1] This would increase, however, if we included juveniles transferred from other correctional institutions for sexual offenses and assaults committed there.

Table 2.3

REAL OFFENSE OF JUVENILE IMMEDIATELY PRECEDING COMMITMENT
(% of sample)

Offense	Whittier State School (N=105)	House of Refuge (N=109)
Delinquent/status offense	34.0	11.9
Stealing Petty and grand larceny Auto theft Burglary and possession of burglar's tools Unlawful entry	59.4	55.0
Unlawful possession of firearms	0	7.3
Transfer from other correctional institution	0	9.2
Probation revocation (not reporting)	0	4.6
Sexual offense	1.9	5.5
Robbery	1.0	1.8
Assault	0	0.9
Arson	1.0	0.9
Unlawful possession of drug	0	2.8
Forgery/bad checks	2.9	0

Angeles youth (slightly higher than in New York) were committed for thieving (see Table 2.3). Their offenses were divided fairly evenly among auto theft, petty larceny, and burglary. In short, despite the two year difference in average inmate age, the proportion of criminally culpable youth at state training school in California was approximately the same as in New York.[2]

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[2] One caveat should be entered here. As noted earlier, auto theft was a far more common offense among Los Angeles than New York offenders (23 percent versus 5.5 percent). It was evident in individual case

Since offenders at the House of Refuge were considerably older, it might be predicted that they had accumulated lengthier formal offense histories (measured by official court appearances) than the Whittier youth. However, this turns out not to be the case. In both New York and Los Angeles, youth committed to state training school had an average of two previous court hearings; that is, they were committed on their third formal court appearance (see Table 2.4). Despite the variation in ages, the courts formally intervened in Whittier and House of Refuge cases the same number of times before deciding to commit.[3]

Table 2.4

FORMAL COURT APPEARANCES OF JUVENILES
(% of sample)

Court Appearances Preceding Commitment	Whittier State School (N=105)	House of Refuge (N=109)
1	10.5	13.8
2	40.0	26.6
3	15.2	21.1
4	18.1	26.6
5	9.5	6.4
6	2.9	1.8
7	2.9	1.8
8 or over	1.0	1.8
	Mean = 2.96 Median = 3.0	Mean = 3.08 Median = 3.48

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histories that Los Angeles youth who intended to run away from home stole cars primarily to achieve that purpose, not to steal the car for a pleasure ride or to resell it. Their criminal offenses, in other words, were derived from their status offenses. To be sure, youth committed as runaways had often earlier engaged in criminal acts. Nonetheless, the statistical parity in stealing behavior between Whittier and House of Refuge youth may obscure subtle differences in the motivation and circumstances surrounding their acts. These differences, in turn, may be related to the lower average age of the California inmates.

[3] Some differences in offense histories between the two inmate populations are worth noting. In Los Angeles, the median number of court appearances was 3, whereas in New York it was 3.48. In Los Angeles, 40 percent of the inmates were committed on their second court

One possible explanation might derive from the different uses of probation versus local institutional placement by the judicial systems. Did the Los Angeles judges rely primarily on short-term probation to punish first and second offenders, committing them quickly to state training school if they flagrantly disobeyed probation regulations; did the New York judges punish first and second offenders primarily by placing them locally but long-term at correctional or foster care institutions?

At first glance, this explanation would seem to have little merit. Juvenile judges in *both* Los Angeles and New York relied heavily on out-of-home before placement in local correctional institutions or foster care arrangements (at least for those youths eventually sent to state training school). Over 50 percent of the California and New York inmates had previously been placed out of home before commitment to state training school (see Table 2.5). Probation at home was by no means a routine judicial response to first or second offenders in either Los Angeles or New York City (again, at least for those youths eventually sent to state training school).

Table 2.5

JUVENILES SENT BY COURT TO ALL OUT-OF-HOME PLACEMENTS
BEFORE COMMITMENT
(% of sample)

Disposition	Whittier State School (N=104)	House of Refuge (N=109)
Out-of-home placement	51.0	60.6
No previous placement	49.0	39.4

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appearance, whereas in New York approximately equal proportions were committed on their second, third, and fourth court appearances (see Table 2.4). There was thus a wider variation around the mean in New York than in Los Angeles. Was this perhaps attributable to the higher proportion of status offenders in California? Short of more elaborate statistical analysis, we cannot tell. Our impression, however, is that it was not; moreover, the intermingling of status and criminal offenses in individual case histories is likely to confound even sophisticated statistical analysis.

If we probe further into local institutional placement, however, important differences do appear, and a possible explanation emerges for the age gap between the Los Angeles and New York inmates. Although the *rates* of previous out-of-home placement were approximately the same, there were large differences in the amounts of *time* that the youths in the two cities actually spent in local institutions. In New York, three-fifths of the House of Refuge inmates had previously spent one year or more at a local custodial facility (principally the New York Catholic Protectory, but many others as well (see Table 2.6). Furthermore, nearly half of these youths had spent two or more years in placement. The experience of Whittier School inmates who had been previously institutionalized was quite different. Only one-fifth had spent one or more years in correctional or foster care facilities (see Table 2.6). Moreover, there were large differences between the House of Refuge and Whittier inmates who had previously done less than one year of institutional time. Most of these New York youth had done substantial time, generally between six months and one year; most of these Los Angeles youth, by contrast, had done very little time, generally less than one month.

Table 2.6

TIME SERVED BY JUVENILES IN CUSTODIAN OUT-OF-HOME PLACEMENTS BEFORE COMMITMENT
(% of sample)

Time Served	Whittier State School (N=45)	House of Refuge (N=66)
Less than 1 year	80.0	40.9
Between 1 and 2 years	11.1	15.2
Between 2 and 3 years	8.8	21.2
Between 3 and 4 years	0	9.1
Over 4 years	0	13.6

In sum, although over half of the inmates at both Whittier and the House of Refuge had institutional records, the nature of their local institutional placements differed dramatically. In New York, the juvenile judges relied heavily on fairly long-term, local institutional placement. They had available an array of nearby facilities they could count on to punish offenders for long stretches of time and apparently did not feel compelled to send youths to state training school to make sure they were punished. In Los Angeles, the juvenile judges could not rely on local institutions to punish offenders for long stretches of time. These local facilities would not, or could not, contain these youths very long. They either sent them back to the streets or returned them to court for new disposition much faster than did their New York counterparts.

Differences in the local institutional apparatus appear to have been very important in shaping judicial decisions about how soon to commit youngsters to state training school and in determining the nature of the populations with which state training schools had to deal. Future historical research on serious juvenile offenders should therefore not be restricted to analysis of youth behavior or of court policies alone. To understand how the serious juvenile offender was identified in earlier time periods, we will have to learn much more about the constraints that limited judicial power to punish youth at the local level.

III. NOT YET THEIR OWN MEN: A CLOSER LOOK AT THE TRAINING SCHOOL POPULATION

The "typical" juvenile offender sent from Los Angeles to Whittier State School in the 1920s was white, native-born of American parents, 13 or 14 years old, and guilty primarily of a stealing and, secondarily, of a status offense. He had been committed on his second court appearance, was likely to have experienced a previous institutional placement, and, if so, to have served less than one year there (quite frequently, less than one month) before his commitment to state training school. The "typical" juvenile offender sent from New York City to the House of Refuge was both similar and different. He was white, native-born of immigrant parents, between 15 and 17 years old, and guilty of stealing. He had been committed on his second, third, or fourth court appearance, was more than likely to have experienced a previous institutional placement, and, if so, to have served at least one and, quite frequently, two or more years there before his commitment to state training school.

Such were the collective portraits of serious juvenile offenders in California and New York. But quantitative analysis invariably imposes an artificial uniformity on human experience. To adequately portray the institutional clientele, we need a more biographical understanding of the youth themselves and the paths that led them to state training school. We do not pretend to recreate individual life experiences--the data are not adequate to that task--but to provide a more vivid sense of offense patterns and legal processes that led the courts to consider the behavior of these youths sufficiently serious to warrant their incarceration in state training school.

R.R. (#4469) was brought into court in Los Angeles at age 13 charged with both incorrigibility and petty thievery. His grandmother and aunt, with whom he lived, had filed charges against him for being unmanageable at home and for constantly stealing small sums from their pockets and dresser drawers. On one occasion he stole $25 to buy a bicycle. In addition, R.R. was implicated in an attempted hold-up.

After stealing a revolver from his grandfather, he had brandished it and another pistol before the neighborhood grocer and ordered him to "hand over the money." The grocer managed to capture the boy without incident, and, deciding not to file formal charges, had returned him to his home.

Although this was R.R.'s first court appearance, the judge considered both the formal criminal charges against him and the surrogate parents' declaration that he was beyond their control, serious enough to warrant local institutional placement rather than probation. He was placed in Pacific Lodge, a minimum security public facility for juveniles run by Los Angeles County in the rural suburb of Woodland Hills. R.R. ran away from Pacific Lodge within a month and, after being captured in San Diego and returned to the institution, ran away again. He was soon arrested while burglarizing a gum machine in a city park. On his second court appearance, the now 14-year-old R.R. was committed to Whittier.

S.V. (#4398) was also committed at the age of 14 to Whittier for stealing. He had first appeared in court for allegedly stealing a diamond pin. The facts of the case remained cloudy. S.V. apparently told the woman who had lost the pin that he had found it. He described it perfectly and told her he would get it. Although she offered S.V. a $5.00 reward, he did not produce the pin. In court S.V. claimed that he had never found the pin and that the entire affair was a joke. The court ordered S.V. to return the pin or pay the woman its market value. He did neither, and the court placed him on probation.

Five months later, S.V. and an accomplice perpetrated a series of burglaries while pretending to sell magazines door-to-door. One boy engaged whoever answered the door in conversation while the other slipped into the house through a window or other entrance and stole assorted valuables. At his court appearance, S.V. again infuriated the court by regarding the matter lightly; so, apparently, did his parents. Whether for this reason or some other, the court sent S.V. directly to state training school rather than to a local correctional facility.

As suggested earlier by the case of R.R., there was often no clear line separating the behavior of the status offender from the criminally culpable offender. In committing a youth to state training school for a status offense, the court always took into account prior proven or alleged criminal behavior. For example, J.J. (#5017) was sent to Whittier at age 13 for disobeying his mother (who filed the petition) and persistently running away from home. J.J. had to "be made to understand that he is not yet his own man," affirmed the probation officer. However, J.J. had also been previously arrested for auto theft and had been placed informally in detention several times (apparently without court appearance) for petty thievery. Although J.J. was officially committed to state training school at his mother's request for a status offense, he had earlier engaged in criminal behavior for which he had not been seriously punished.

K.C. (#4608) presented a less ambiguous case of the court deciding that it had no alternative but to send a status offender to state training school. K.C. was charged as a truant and runaway (whether school authorities or his parents filed on him is uncertain). In addition, K.C. apparently admitted to stealing from his parents. Because the court considered K.C.'s parents incapable of exercising effective discipline (in part because of their incessant quarreling), they placed the 14-year-old at Pacific Lodge. Within a few days, K.C. ran away. He was returned, ran away the same day, was returned again, and ran away the following morning. Following his third runaway, K.C. was returned to court and committed to state training school. If a youth brought into court--whatever the charge against him--simply refused to stay put at Pacific Lodge (or several other minimum-security public and private facilities that the county used), it was fairly predictable that the court would eventually send him to Whittier for lack of more secure local institutional alternatives.

All of the inmates discussed so far were "typical" in being 14-year-olds who were committed on their second court appearance for a stealing or status offense. Two of the four had previously been placed in a local correctional facility; they had repeatedly run away and were therefore sent to Whittier. Less "typical" cases further illuminate the range of youth behavior that juvenile judges in Los Angeles considered sufficiently serious to merit punishment in state training school, and the range of procedures and options that judges exercised in deciding which youngsters to commit and when to commit them. From these less typical cases, it appeared to be anybody's guess as to what lengths the court would go in individual instances before committing a youth to state training school.[1]

Consider the case of J.M. (#4470), a 15-year-old who had been caught red-handed for illegal entry and attempted burglary of a home. During the hearing, the court learned that J.M.'s parents were dead. Three months earlier, upon graduation from grammar school, he had left the home of the woman he was living with, bummed his way to Salt Lake City, and then returned to California where he committed the attempted burglary. The court placed J.M. on probation. The probation officer found him a job and located a foster home for him. J.M. failed on the job, however. He also pawned the new suit of clothes the probation officer had bought him, and was picked up numerous times by the police (who failed to notify J.M.'s probation officer) for wandering the streets. Finally, J.M. was booked as an adult for vagrancy and sentenced to serve 90 days in the city stockade.

After 10 days, J.M.'s probation officer secured his early release and got him placed in another foster home. He ran away after three days, was arrested three weeks later for illegal entry and suspicion of larceny, and was sentenced to 30 days in the county jail. The probation officer visited him and, despite finding that J.M. was "wholly indifferent as to what had happened to him," secured his early release, placed him in a boarding home, paid a week's advance rent, and urged J.M. to find a job within that time. J.M. failed to do so, but the probation officer soon found him a job anyway. The night before J.M. was to begin work, he ran away with another boy, pawned the second new suit of clothes the probation officer had bought him, and stole a revolver from his landlady. When apprehended three days later, he refused to reveal what he had done with the revolver. At long last, J.M. was committed.

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[1] Until we have the opportunity to compare the behaviors and legal procedures applied to youths sent to state training school with those who were not, we obviously cannot reach firm conclusions about the particular criteria the court used to make commitment decisions.

Consider, too, the long rope that the court gave J.J. (#4594), a youth who first appeared at age 10 for illegally entering and stealing 35 cents in pennies from a furniture store. The court was more than willing to place J.J. on probation, for he had never been in trouble before and his parents pledged full cooperation with the probation staff. However, it soon became apparent that J.J. was not ready to cooperate with anybody. The probation officer tried to visit him on four occasions; each time he disappeared from home, without his parent's permission. Two months after his initial court appearance, J.J. was called back into court and scolded by the judge for habitually disobeying his mother.

Three months later, J.J. and a group of friends broke into his school and destroyed several thousand record cards. He remained on probation, however. Two months after that, J.J. and a friend burglarized a public market. On this occasion he was again brought into court, where his school principal revealed that he was habitually truant. The court thereupon imposed a suspended sentence to Whittier but released J.J. in the custody of his parents.

While J.J. kept formally out of trouble during the next six months, his home situation became of increasing concern to school and court authorities. J.J.'s mother apparently kept him out of school, shielded him on several occasions of mischief, and was inconsistent in her reports to the court on how well J.J. was doing at home. Finally the judge ordered the parents into court for formal reprimand. None of this seemed to impress J.J., who was arrested soon after for stealing lead pipe from the telephone company. Again he was released with a reprimand and continued on probation. One month later--16 months after his first court appearance--J.J. was arrested with friends for burglarizing a garage and stealing tires, batteries, and tools. On this occasion the court finally decided that enough was enough, especially after J.J.'s mother stated that she had given up and simply could not control him. At age 12, J.J. was committed to state training school.

Juvenile judges were thus willing to go to great lengths in some cases to avoid sending a youth to Whittier, despite a record of persistently criminal or irresponsible behavior. In other cases, however, they showed little patience and committed youths soon after they first appeared in court, despite little evidence of persistently bad behavior or criminal conduct.

When dealing with felonious behavior, the court's reaction to first-time offenders was fairly predictable. Rapists, for example, received no consideration. J.B., age 14, had attempted intercourse with the three-year-old girl for whom he was a regular babysitter. The idea for the act, J.B. claimed, had come from his uncle who had practiced anal intercourse on him. Although J.B. had no prior record of bad behavior, he was immediately committed to Whittier. Forgers and robbers as well as rapists were also likely to be committed on their initial court appearance. For example, the probation officer's report on R.M. (#4397), accused of robbery, was very positive. This was the first time the 15-year-old had ever been in trouble. Moreover, "he fell into this present difficulty more or less by accident as he does not appear to be a very vicious sort of boy; he is a good worker, good natured, and I believe has discovered that it is better to do right than wrong." Nonetheless, the court sent R.M. to Whittier on his first court appearance.

In less serious cases, however, the court was also sometimes unwilling to try to rehabilitate a youth locally--whether by probation, foster home, or local institutional placement--before committing him to state training school. Consider the situation of W.B. (#4490), age 12. W.B.'s parents had died one month before his court appearance. He was adopted by another couple but refused to obey them and was constantly running away and playing truant. One morning the police picked up W.B. on the streets as a truant and released him to a probation officer, who took him home in order to learn about his situation. While the probation officer questioned his foster mother, W.B. quietly slipped out of a back window and stayed away from home for two weeks. When he returned, his foster mother brought him to court. Although she filed charges on him as incorrigible, she affirmed her readiness to have him return home if he would stay.

The probation officer, however, thought otherwise. He was particularly dissatisfied with W.B.'s indifferent attitude. W.B. was "noncommittal in all of his statements. He doesn't seem to know why he did anything he has done, and when questioned as to why he ran away from home, he shook his shoulder and said, 'I don't know.'" Moreover, the probation officer expressed strong disapproval of W.B.'s deceased parents, who were alleged to have been "sporting people" who "lived a very immoral life." Not only was W.B. afflicted with hereditary syphilis, the probation officer concluded, "he had been brought up under the influence of immoral conduct, filthy speech, and indecent living conditions, and very little more can be expected of him." Consequently, the probation officer decided against giving W.B. another chance and recommended his commitment to Whittier--largely for the sins of his parents, it would appear.

While W.B.'s family history was unusually sordid, the court also sent other youth to state training school whose home situations were less severe and whose criminal records were minimal. The case of D.L. (#4619), age 16, was illustrative. Although D.L. was first brought to court for auto theft, he apparently stopped stealing cars after being placed on probation and returned home. However, his mother, a widow, complained repeatedly to the court about his unwillingness to obey her, and he was failing all of his subjects in school. Moreover, D.L. refused to work after school to help sustain the mother's precarious economic position. "He is very impudent and saucy to his mother at times," the probation officer observed. Because of this persistent impudence, the probation officer made a personal appeal to the superintendent of the Whittier School to see whether he would be willing to accept D.L. as an inmate.[2] The superintendent agreed and, more than a year following D.L.'s sole criminal offense, the court committed him.

No brief selection of training school case histories can possibly distinguish with precision the typical from the untypical inmate at Whittier, or convey the full range and flavor of the steps that led to his commitment. Yet, three points do appear more strikingly apparent from this selection of individual cases than they did from the earlier quantitative analysis.

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[2] See below, p. II-33, for the legal arrangement which made this type of institutional commitment possible.

First was the varied nature of court interventions before the commitment decision. Although half of the inmates were committed on first or second court appearance, this statistic can easily obscure how often and in how many diverse ways the probation staff worked informally to alleviate distress among youth and their families. Second, the individual histories highlight unpredictable elements in the legal processing that preceded commitment. One youth might commit five successive burglaries and yet remain on probation until the last one; another might commit only a single petty theft yet be embroiled in such irreconcilable family conflict that the court felt compelled to send him somewhere, even to state training school; a third might be little more than truant or disobedient at home, yet react so strongly against placement in a local institution that his persistent running away would provide new, more serious grounds for commitment to Whittier. It was not that there were no regularities in the legal processing--the earlier quantitative analysis demonstrated clearly that there were--only that it was difficult to predict when the court would decide to vary its interventions. Whom would the court place in a local correctional facility rather than on probation? Whom would the court commit on his second rather than on his sixth court appearance? The odds were clear, but the exceptions remained something of a mystery.

Finally, the case histories point up the extraordinary diversity of youth sent to state training school--a diversity that quantitative analysis tends to flatten out. Neither the officially listed offense nor the real immediate offense goes very far toward illuminating the range of life experiences and specific offense histories that judges considered relevant to sentencing decisions. Whittier served all varieties of hard-to-handle youth, from the homeless 9-year-old to the jobless 17-year-old, from the witless truant to the ingenious burglar, from the joyrider to the professional auto thief. The average inmate age may have been 13, but nearly one-quarter were age 12 and under, and nearly one-fifth were over age 15. The age range thus spanned the fourth grade until the end of high school: surely an administrative nightmare for anyone responsible for merely housing youth, much less for rehabilitating them. Whittier contained a grab bag of criminal, disobedient, and mainly unfortunate youth whom the courts singled out as serious offenders as much for their total life histories as for the specific offenses they had committed.

The case histories of inmates at the New York House of Refuge are not as illuminating as those at the Whittier State School, but they do further our understanding of the two inmate populations and the legal processes that preceded training school commitment. As explained earlier, the "typical" offender at the House of Refuge, as at Whittier, was guilty of stealing, but he was, on average, two years older, had appeared in court more often, and had spent more time in local institutions. Much more often than his Whittier School counterpart--as one would expect from the age differences between them--the House of Refuge inmate had been employed (or previously employed) rather than in school before to commitment.

J.L. (#36150), age 17, employed as a plumber's helper, was sent to the House of Refuge for accompanying and receiving goods from five gang accomplices who stole candy and cigarettes from a candy stand. J.L. was reputed to belong to a gang known as "The Forty Thieves" and had a long record of poor conduct at home and at school. On his father's complaints, he had been institutionalized four times previously for a period of nearly four years (mainly at the New York Catholic Protectory). Although incorrigibility and truancy were the main complaints, he had also been arrested for stealing. When committed to the House of Refuge, he had been on parole only two months from the Catholic Protectory. Thus, J.L. had been in and out of institutions at least from the age of 13 onward (and probably much earlier); he had never been placed on probation. Given his age and institutional experience, J.L. was a very different sort of offender from the vast majority of youth at the Whittier School.

Somewhat similar was the case of A.F. (#36085), age 16, a newsboy by trade, who was committed after being arrested at 3:30 a.m. for possession of burglar's tools (a chisel and screwdriver) and admitting that he was on his way to breaking into a train station newsstand. Like J.L., A.F. had previously been institutionalized locally on four occasions, for a total of nearly three years (also mainly at the Catholic Protectory). The charges ranged from larceny to truancy to indecent exposure. After accumulating a poor school record and failing to persuade his parents or school authorities to allow him to work, A.F. had become a regular truant from age 13 onward. Thus, he, like J.L., had spent the better part of his adolescent years in local correctional institutions before commitment to state training school.

There were numerous exceptions, however, to the norms of multiple prior court appearances and lengthy local institutional placement. Whatever the charge against a youth (felonies excepted) and whatever his offense history, it was not easy to predict when or on what grounds the court would choose to commit him to the House of Refuge.

Consider the case of T.C. (#36057), age 15, and still technically in school (although only in fifth grade and truant for the previous half year). T.C. was arrested for forcible entry and theft of $6.00; he also admitted that he and two friends had committed three additional burglaries during the previous month. T.C. had no offense record. His principal difficulties appeared to be poor companions, a failing school record, and inability to find a job. Although his mother switched him into several different schools, he was unable to progress. At his last school, run by a Polish church, the priest allegedly "said it did not matter whether the boy came to school or not as he was no good and could not learn anything." (T.C.'s mother attributed his school retardation to his being kicked in the face by a horse at age 5). If we may judge from the later abuse that a training school official received from T.C.'s mother, it seems likely that she had also been uncooperative when T.C. had appeared in court--parental behavior that may well have jeopardized T.C.'s freedom. Whatever the reasons, T.C. was sent to training school on his first court appearance despite his mother's vigorous protestations.

The case of W.M. (#36134) was similarly illustrative of the court's erratic decisionmaking regarding when to commit a youth to state training school. Employed by a furrier, 17-year-old W.M. was arrested for stealing two pieces of fur valued at $8.00 each; he also apparently confessed to having stolen an additional 38 pieces of fur valued at $15.00 each. Both his home and his conduct were exemplary. He had never previously been in trouble, kept regular hours, and always turned over his wages to his parents. Nonetheless, W.M. was committed to the House of Refuge on his first stealing offense and court appearance.

Juvenile judges in New York City sent only one-third as many status offenders to state training school as did their counterparts in Los Angeles. Although the sample is small, the cases of I.C. (#36013) and E.C. (#36190) illustrate the varied uses to which the courts were willing to put state training school.

I.C. was a 15-year-old in a state of war with his parents. Although complaints came from his teachers, the principal complaints were that he stayed in bed until the afternoon and refused to take a job unless it would pay approximately twice the customary rate for unskilled labor. He refused to obey any of his parents' directives and regularly insulted and cursed his father. On one particularly bitter occasion, when his father attempted to strike him, I.C. struck first, and hard. His father thereupon filed a formal complaint against him, to which the court responded by putting I.C. on probation. Over the next six weeks the home situation went from bad to worse. I.C.'s father returned him to court on multiple charges: failing to secure employment, using indecent language at home, and assaulting members of his family. The court responded by committing I.C. to the House of Refuge.

Rather different was the case of E.C., age 17, who was sent to state training school on his first court appearance, on the complaint of his father, "for staying out late at nights, disobedience, and trying to be boss of the house." Since dropping out of high school, E.C. had been unemployed for nearly a year, and had grown increasingly disobedient. The primary difficulty, though, was E.C.'s emotional involvement with, and threat to marry, a woman whom the parents blamed for his staying out late and becoming refractory at home. The parents (E.C. was an only child) were quite blunt in their motivation: "The reason they had this boy sent away was because they could not control his actions and they wanted to protect him from a woman who had a bad influence on his conduct and morals." The court thus employed its broad authority to send to state training school a youth with no prior arrest record, and whose main immediate offense was an affair of the heart.

As in Los Angeles, the only group of offenders to receive more-or-less consistent treatment from judges were the felons, especially those guilty of sex offenses (approximately half of the institution's felon population). The sex offenders were a diverse group. Only one, W.R. (#36064), age 15, was committed for homosexual behavior (practicing sodomy on a 9-year-old boy). He had previously been institutionalized twice for a total of two years at the Catholic Protectory, on his father's complaint (for larceny). He had been paroled from the Protectory only one month before his commitment to the House of Refuge.

While the other five sex offenders all committed or attempted rape on younger girls, the particulars and circumstances surrounding each case varied considerably. Two of the boys were guilty of incest. Neither had prior offense records, and, indeed, both were exemplary in their general home, school, and work conduct except for their recently discovered moral offenses. R.G. (#36105), age 14, and in the eighth grade at school, was discovered by his aunt (with whom he was living following his parents' separation) to have had intercourse with his 8-year-old cousin. He was so discovered, apparently, only because the little girl contracted gonorrhea from him (he had contracted the disease from another girl several months previously). In the other incest case, J.K. (#36169), age 16, a grammar school graduate regularly employed at an engraving company, was arrested for having regular sexual contact (he denied intercourse) with his 13-year-old sister, who was apparently well-known for promiscuous behavior with other neighborhood youth and sailors. J.K. admitted that "for several years he has been 'fooling around' with her indecently, but that she was the instigator and always came to his bed and wanted him to 'do it.'" J.K. also admitted to having had "indecent relations" on one occasion with another of his sisters. In addition to committing J.K. to the House of Refuge, the court also sent his 13-year-old sister to a private correctional institution for girls.

The three remaining sex offender cases exemplified rape in its diverse legal forms. A.H. (#36160), age 15 and regularly employed, had sexual intercourse with an 11-year-old girl upon the rooftop of a house. Although A.H. had never been in trouble before, the facts of the case were clear-cut. More ambiguous was the case of E.W. (#36147). E.W. was age 17 and employed as a barber. He had once previously been held but not formally charged for receiving stolen goods. E.W. was accused of rape by a 15-year-old girl. However, he would only admit to the attempt rather than to the act itself. His family, moreover, alleged that the girl had been regularly hanging out with a group of boys who were fully as culpable as their son, but who were not similarly charged. Finally, there was the highly ambiguous case of T.S. (#36144), age 17 and employed as an errand boy. T.S.'s only prior record was a probationary sentence for larceny. He had left home after incessant quarreling with his father and taken up residence with the family of a 15-year-old girl of whom he was very fond. T.S. and the girl had intercourse and told her father they wished to be married. T.S.'s father approved but the girl's father refused consent. He had T.S. arrested and committed for rape (technically for 2nd degree assault) to the House of Refuge.

These individual case histories reinforce and suggest several tentative additional comparisons between the behavior and legal processing of the inmates at the House of Refuge and the Whittier School. First, there was a similar unpredictability in the legal processing of youths eventually committed to state training school. Save for felonious offenses, a youth's offense history alone was insufficient to predict how much or how little rope the court would give him before committing him to the House of Refuge.

Second, judges in New York appear to have employed a narrower and more punitive set of treatment options before commitment to state training school than did their counterparts in Los Angeles. The Los Angeles court was far more involved in attempting to readjust troublesome home situations through foster care and aggressive informal probationary intervention. Owing to the greater availability in New York City of a group of secure, local, privately run correctional facilities, the judges there may have had less incentive to experiment with noninstitutional treatment options (at least for those youth they eventually committed to the House of Refuge). They may also have had less cause to resort to state training school early in a youth's antisocial behavior pattern.

Third, although inmates of the House of Refuge fell within a narrower age range than those of the Whittier School, and although there were fewer status offenders, the case histories similarly highlight the extraordinary diversity of the inmate population. One-time petty thieves mingled with professional burglars; 15-year-olds who had never been incarcerated mingled with those who had spent virtually all their years since puberty in secure correctional institutions; the innocent victims of incessant family turmoil mingled with drug addicts and rapists. The House of Refuge contained less of a grab bag of victimized and victimizing youth than did the Whittier School, but its inmates also appear to have been singled out less for their specific offense histories than because judges simply lost patience with them or could figure out no alternative that would otherwise remove them from an untenable home situation.

Finally, although inmates at both institutions were committed primarily for stealing and had accumulated the same number of court appearances and institutional placements, they differed on several important dimensions. Not only was the House of Refuge population older, there were also more felons, fewer status offenders, and more boys who had served lengthy terms in secure local correctional institutions. Treatment programs at the two facilities were likely to reflect, at least to some degree, the different profiles of their clientele.

IV. VARIETIES OF TREATMENT IN THE 1920S

Juvenile reformatories in the 19th and early 20th centuries were not all of a piece, although historians, criminologists, and corrections practitioners have tended to portray them that way on the basis of inadequate archival research. Nor is the history of correctional philosophies and treatment programs simply a story of variations on a theme of harsh punishments and custodial imprisonment. A thorough study of correctional innovations in the early 20th century would, we suspect, locate the origins of many treatment ideas that have been considered most "progressive" and "enlightened" during the past two decades.

For now, we limit our analysis of correctional programming in the 1920s to the Whittier School and the House of Refuge, each of which enjoyed a very different reputation among theoreticians and practitioners. Whittier, it was widely thought, embodied the most avante-garde, "progressive" correctional ideas in circulation, whereas the House of Refuge, severely hampered by dilapidated facilities, embodied much more traditional, punitive approaches to treatment. We highlight especially the theories of delinquency causation and of effective programming that distinguished treatment philosophies at the two institution. We leave entirely moot whether either institution successfully implemented its ideal program and whether either one's claims to rehabilitative success can be empirically validated.

Since 1912, Whittier had been under the superintendency of Fred Nelles, who had been appointed to the post by California Governor Hiram Johnson. "It seems to me," said Johnson, that "the management of these reform schools was erroneous, and that if they could serve no other purpose than to educate young men into crime, and to graduate them ultimately into the state prison, they ought to be abolished."[1] Nelles brought no special expertise to the job. Thirty-six years old at the time of his appointment, Nelles was a Canadian businessman who had settled in California only three years earlier. His only prior public service was as vice-president of the Los Angeles Good Government Organization and as treasurer of the City Club (both strong backers of Johnson's gubernatorial candidacy). Before accepting the position of superintendent, Nelles thought it essential to travel to the east coast in order to learn something about current correctional theory and practice.

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[1] Cited in David Reid, "The Early History of the Fred C. Nelles School for Boys," M.S.W. Thesis, University of Southern California, 1964, pp. 33-34.

Nelles may have been lacking in expertise, but he came into office with a fully developed theory of effective programming. There were four main components. The first derived from his belief that there were distinct types of delinquent youth who required complete segregation and separate treatment. Of greatest concern was the so-called feeble-minded delinquent, whose antisocial conduct was largely incidental to his low-level of intelligence. Feeble-minded youth, Nelles felt, contributed highly disproportionately to the delinquent population; at least one-third of Whittier's inmate population, he argued upon taking office, fell into this category. Because these inmates consumed disproportionate resources and hampered implementation of a rehabilitative program, Nelles insisted that they be removed to new types of custodial facilities. Nelles' arguments formed part of a larger body of opinion in the early 20th century that led to the creation of separate facilities for so-called defective delinquents. By the mid-1920s, he had successfully rid Whittier of inmates who scored unusually low on intelligence tests.

The other main type of offender whose presence Nelles feared was defined less by native endowment than by age and motivation. These were the "willful offenders," usually over age 16, "to whom waywardness has become rather habitual, boys with false ideals who are consistent in wrongdoing, believing there is something admirable or heroic in violating the law."[2] In the mid-1910s, Nelles persuaded the state legislature to lower the age of admission to Whittier to youths under 16, and to empower him to transfer persistently refractory inmates over age 15 to the Preston School of Industry at Ione. Except for the elimination of one other offender type (the so-called psychopathic delinquent), Nelles fairly well achieved his goal of keeping out inmates who would be predictably hostile to his treatment regimen. Whittier housed primarily "boys of sound mind who have been denied their fair chance in life, victims of circumstances, boys who are willing to quit wrong practices and give up bad habits when their need for special care and training is fairly met."[3] Thus, Nelles' theory of effective programming presumed considerable control over admissions and a select population on whom to translate theory into practice.

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[2] *First Biennial Report of the Department of Institutions of the State of California* (1923), p. 90.

A second main component of Nelles' treatment philosophy involved residential arrangements for inmates. The Whittier School had been built on the congregate or large dormitory housing plan, rather than the family or small cottage design. The former, Nelles believed, smacked inevitably of prison organization and routine, whereas the latter, by facilitating the re-creation of surrogate family bonds, made possible an entirely different atmosphere and therapeutic regime. By the mid-1920s, Nelles had succeeded in getting enough building funds to house most inmates in new cottages. Each held two to three dozen boys grouped according to a combination of age and personality characteristics, and each was under the supervision of a married house father and mother. Conditions in the cottages, Nelles claimed, "approximate those of good homes . . . for some of the boys, are better than any home they have ever known."[4] The cottage housing plan provided both an essential structural precondition for, and a key component of, Nelles's treatment plan.

Clinical diagnosis of inmates' behavior problems was the third main element in Nelles's correctional plan. With active cooperation and participation of the Psychology Departments at Stanford University and UCLA, Nelles developed his own research department (later called the California Bureau of Juvenile Research) to provide extensive psychological testing and, to a lesser extent, psychiatric counseling of inmates. The prime objects were to formulate treatment plans that took into account inmates' special needs, to pursue systematic research into the causes and cures for delinquency, and to provide a scientific basis for individualization as a tenet of correctional philosophy. "The individual must never be submerged in the group," Nelles stressed,

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[3] Ibid.

[4] Ibid., p. 92.

> on the contrary, the group is of value only as it helps in solving the problems of each of its members. Boys should not be compelled to adjust to some one common mold; molds must be so patterned as to suit the requirements for effective treatment of each one of them. We try to see that this underlying principle in our program finds itself evidenced in the classroom, the shops, and all through the school.[5]

At first, the Bureau concentrated its energies overwhelmingly on issues of feeble-mindedness. By the 1920s, the Bureau's clinical services had expanded and diversified. Each boy received "an individual analysis and diagnosis" that included "psychological tests, tests of educational achievement, psychiatric examination where that is indicated, social analysis [by which he meant investigation of the boy's home and neighborhood], and an analysis of the conduct record, habits, emotional trends, interests, and special abilities of the boy."[6] Based on the clinical findings, the Bureau staff formulated a plan of treatment and also recommended specific placements for the inmate in cottage, school, work assignments, and recreational endeavors. Bureau staff were also available for individual counseling of inmates and of staff, and played a role in parole decisions and assessment of children's behavior after leaving the institution. "The first task of Whittier is to discover the particular needs and peculiarities of the boy and find the methods which will bring him back to normal educational and social adjustments," Nelles insisted.[7] Science, in his view, was the key to individualizing treatment.

The conceptual capstone of Nelles's theory of effective programming lay in reconceiving the state reformatory as part of the general system of public education. No achievement was more important, in his view, than getting the state legislature to eliminate the words "discipline" and "reformation" from the original act describing the purpose of the Whittier School, and substituting for them the more benign goals of "education, training, care, supervision, and moral development."[8] Indeed, Nelles's hope was to take Whittier out of the supervisory control of the State Department of Institutions altogether and place it within the State Department of Education. Although this goal went unrealized, Nelles did gain legislative approval to allow courts to place boys in Whittier on probation without a formal commitment. More remarkable still, he persuaded legislators to pass a law that enabled parents or others (principals, probation officers, social welfare agencies) to negotiate with Nelles personally and gain admittance for children "without becoming wards of the court at all."[9] Emphasizing that Whittier had proscribed corporal punishment and had neither fences nor guards to prevent inmates from leaving, Nelles insisted that the public regard it not as a custodial institution at all, but as "a special school to which boys go from the public schools and to which they must return"--an unfortunate interlude, to be sure, but no more than that either, and one from which they might profit enormously.[10]

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[5] *Third Biennial Report of the Department of Institutions of the State of California* (1926), p. 46.

[6] Ibid., p. 49.

[7] *Second Biennial Report of the Department of Institutions of the State of California* (1924), p. 16.

Nelles carried his thinking along these lines in the direction of what might today be considered diversion (although entirely under public auspices). He gained considerable publicity as inventor of the "24-hour school" idea. Cities and counties, he argued, ought to create such facilities and place them under the authority of individual school principals in order to enhance their and other community members' flexibility in helping troubled youth. "Boys would be assigned by the public school on the basis of their rights and needs as children rather than be committed by the court as offenders against the law," Nelles proposed. "Assignment to a 24-hour school should be exclusively an educational procedure free from stigma. Responsible adults or the community rather than the child should be required to explain irregularities in the child's conduct."[11]

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[8] *First Biennial Report*, p. 90.
[9] Ibid., p. 91.
[10] *Third Biennial Report*, p. 48; *First Biennial Report*, p. 91.
[11] *Third Biennial Report*, p. 54.

For boys who persisted in delinquent behavior despite assignment to a 24-hour school, he proposed another tier of educational facilities, to be known as adjustment or probation schools. These facilities, Nelles believed, should be under court jurisdiction but should receive state subsidy since they would be detaining youth who were currently being sent to Whittier. "There are many good reasons for keeping certain boys in their own communities," Nelles wrote. "This would . . . avoid the stigma of having been made a state ward and, assuming good home or other local influence, these could still be exerted under the supervision of the probation office. Reabsorption into the public school should be more easily effected than where there has been complete removal from the county."[12]

Whittier thus became for Nelles the last resort of a new public system of special schooling for troublesome youngsters. Even at Whittier, though, nonpunitive educational goals and methods--applied in a surrogate family residential setting and aided by clinical diagnosis--were to remain predominant.

Nelles's theory of effective programming had four main rehabilitative objectives: transformation of character, cognitive development, job preparation, and group loyalty/social cooperation. Character or moral development took clear precedence. "We must actually replace wrong ideals with right ideals and so organize our program for each boy that his character will in fact be formed again," Nelles boldly stated.[13]

> This purpose is maintained, even at the risk, in certain instances, of sacrificing a portion of formal schooling or industrial training. . . . To be compelled to do what is right by force, or to be prevented from some wrongful action merely through fear or by reason of temporary inability because of restraints artificially imposed, is but poor preparation for right living in the society to which the boy is to be returned. It is our constant aim to create in the heart and mind of the boy not only a desire but a determination to be and do right because it is right. No mere outward formal compliance with rules and regulations is a safe

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[12] Ibid., p. 55.
[13] Ibid., p. 47.

> basis for his return or for expecting to see a boy become truly successful in life.[14]

Schooling, vocational training, and experience in teamwork were the main activities through which Whittier sought to transform moral character. These were preceded, however, by an elaborate intake procedure. Each boy was greeted, whenever possible, by the superintendent, interviewed by his secretary, and locked for several days in a hospital quarantine room until it was certain he harbored no infectious diseases. From the hospital he went to the receiving cottage, where he remained from four to six weeks for clinical study and diagnosis. Treatment during intake was the closest Whittier came to providing a purposeful punitive experience (apart from formal disciplinary procedures, described later). Inmates were kept separate from the rest of the institution, received educational instruction for only ninety minutes per day, and devoted the remainder of their time to doing institutional laundry and grounds repair. Following this experience, inmates then spent another six weeks in a "service" cottage, where they remained segregated, received limited education, and did only routine chores. Thus intake lasted approximately three months. Its purpose was both to provide a lengthy opportunity for observation by clinical staff and mild deprivation and punishment (at least compared with the mainstream treatment program).

Clinical considerations strongly influenced placement decisions regarding cottages, school grades, and vocational training, although age and physical development were equally pertinent considerations. Upon leaving intake, inmates learned their specific assignments and the reasons for them. In addition, each inmate was assigned a "first friend" or counselor with whom he might get in touch at any time about personal problems. Inmates could write twice a month to as many relatives as they wished, but had to get formal permission to write to anyone else. Incoming and outgoing mail were carefully censored. Only relatives could visit inmates, during nine weekend visiting hours. There were minimal restraints on inmates' movements within the institution. They rarely marched in formation and, as noted earlier, there were no fences or guards to prevent escapes. Whittier did not provide uniforms, so the boys wore their own clothing and had individual lockers for their personal possessions. Smoking was proscribed, as, of course, was sexual contact, which was carefully monitored at night by a special supervisor for each cottage.

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[14] *First Biennial Report*, p. 47.

Cottage life at Whittier was ideally designed to be as central and supportive to inmates as a stable, intact home would be on the outside. Obviously, no family would be as large as a surrogate cottage family, but the cottages built during Nelles's administration housed only 25 to 30 boys, an unusually small number even compared with "progressive" reform schools in other states. Another obvious difference from customary family life was the mixture of white, black, and Mexican children; no effort was made to segregate groups by ethnicity or race. Nelles was generally successful in providing married couples to supervise each cottage, although, given the small salaries they received and the constraints they lived under, it required considerable persuasion to retain them. Each cottage ate as a unit, with food delivered from a central kitchen. Each cottage also had its own separate playground and a living room for informal recreation and reading after dinner and before bed (9:00 p.m.).

During the early part of his administration, Nelles, in line with "progressive" educators throughout the country, gave primary attention to building up formal vocational training at Whittier. By the 1920s, while not denigrating vocational preparation, he placed increasing emphasis on academics, particularly now that the number of "feeble-minded" boys and those over 16 had been sharply reduced. All boys under age 14, and those over 14 who had not completed fourth grade, attended academic school every day (approximately 5 1/2 hours of actual instruction time). The others spent half the day in school and half in vocational training. All academic grades through 11th were offered, and an ungraded class taught boys over 14 who had not completed fourth grade.

Nelles believed that a reform school provided an unusual opportunity for individualized educational experimentation along academic lines. He was highly critical of public schools for failing to adapt standard educational procedures to children who did not fit into the system and believed that public schools often did more harm than good. "Certain exceptional boys cannot respond to any ordinary procedures however well suited it may be to the need of the average boy," he observed. "Truancy and delinquency not infrequently follow a requirement to do the impossible in school." Many were the cases, Nelles believed, where a delinquency problem was "primarily an educational problem," and where the Whittier School, with cooperation from experts at UCLA and Stanford, was able to devise new pedagogic procedures to help academically retarded children catch up to their age peers.[15]

Nelles's boldest pedagogic invention was to adapt to Whittier the contract learning plan that had been pioneered at the Dalton School in New York City and the Winnetka school system in suburban Chicago (perhaps the nation's two leading examples of "progressive" education in the post-World War I period).[16] At each grade level above 6th grade, several separate "contract plans" containing 200 lessons each were developed so that boys of different capacities could learn at a pace suited to them (or at least more so than the standard 8th grade lesson plan). In addition, academic lessons were correlated with vocational preparation. Spelling and arithmetic assignments, for example, would emphasize words and exercises relevant to individual trades. The flexibility of the contract plan was particularly well adapted to Whittier because of the irregular arrival and departure of inmates throughout the year and because it was possible to alter contracts of boys who were failing without subjecting them to as much derision as in public school. Outside evaluators considered the educational experiment a notable success.

> Dull boys were not subjected to the discouragement which tended to lead to the emotional conflict and hatred of all school work that is frequently the result of being forced to do exactly the same amount of work of the same degree of difficulty as very much more intelligent boys. By being given lessons suited to their ability, they were relieved of the feeling of inferiority and given a feeling of achievement,

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[15] *Second Biennial Report*, p. 66.

[16] See Lawrence Cremin, *The Transformation of the School*, Alfred A. Knopf, New York, 1961.

> which in turn reacted most favorably on their interest and the effort which they were willing to put forth.[17]

Nelles showed great faith in the elaborate vocational training programs developed during his administration. Though he claimed that many former inmates continued working in the same trades on the outside, he saw vocational training principally as a form of character development and a spur to maturation. "Most boys reach Whittier without a normal interest in any definite career. . . . Not infrequently trades instruction opens up a new world to an indifferent boy. He becomes interested and ambitious; acquires habits of industry; and thinks in terms of future accomplishment in 'my trade.'"[18] Whittier taught approximately a dozen trades. Frequently, however, the line separating training from institutional maintenance work was hard to distinguish. To Nelles, the key was not whether inmates contributed to institutional maintenance--he saw nothing inherently wrong with that as part of his character-building, group loyalty goals--but whether they worked under the close supervision of highly competent practitioners in the individual trades. By and large, he was satisfied with the tradesmen he recruited as vocational instructors (most of whom lived in the city of Whittier and commuted to work).

No less central than schooling or trade instruction to Nelles's theory of effective programming were formally organized athletic and recreational activities. In addition to daily gym class for everyone (featuring calisthenics), the sports program emphasized cottage-based, competitive intramural contests year-round. Participation was carefully limited to boys who were performing well in school and demeanor. The best cottage team and an all-star team in each sport regularly played against boys from nearby public schools. The prime aim of the program was not victory but, as in vocational training, character development. Sports activities were thought to offer "exceptional opportunities for developing a sense of social or group responsibility and appreciation of fair play and good sportsmanship, also for teaching boys to restrain their tempers, fight on equal terms, and take defeat with good grace." As an outside evaluator summed it up, "the therapeutic aspects of physical education were considered of paramount importance and athletics was by no means treated merely as a form of recreation."[19]

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[17] Alida Bowler and Ruth Bloodgood, *Institutional Treatment of Delinquent Boys*, Washington D.C., 1935, p. 33.

[18] *Second Biennial Report*, p. 66.

Recreation may not have been considered as "therapeutic" as athletics, but it was no less organized and central to Nelles's treatment program. Sociological studies conducted at the California Bureau of Juvenile Research and by other scholars had indicated that delinquent conduct generally occurred in leisure hours rather than at school or at work. Hence, Nelles considered it central to teach boys the wholesome use of leisure time. A regular 5,000 volume branch of the Los Angeles County Library was opened at Whittier to stimulate and provide opportunities for reading. Each cottage was equipped with a loud speaker through which Nelles played radio programs designed to improve inmates' musical tastes, and which he often used to read stories and books aloud at night (recall that oral reading of books in a family setting was far more common in the early 20th century than today). Motion pictures were also shown. In addition, Nelles placed special emphasis on boys' participation in regular dramatic presentations and in music. Whittier fielded a band whose services were regularly requested by outside organizations.

The music, radio, and motion picture activities were all partly subsidized by volunteer organizations in Whittier and Los Angeles. The most substantial contribution from the private sector was the sponsorship by a local businessman of a 7 to 10 day summer camp experience each year on Catalina Island for every boy. Finally, and perhaps most important to Nelles because he believed it substituted for the need for military trappings of any kind, Whittier sponsored a thriving Boy Scout program. Whittier Scouts regularly left the institution for hiking and other activities. Scout executives in the city of Whittier were heavily involved in the program's administration. When inmates were paroled, special efforts were made to enroll them in a local Scout unit.

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[19] Bowler and Bloodgood, p. 37.

Given his stress on character development, it is interesting to note that Nelles did not emphasize religious training, although Whittier did employ a Protestant chaplain and made arrangements for regular worship by Catholic and Jewish inmates. Beyond conducting Sunday services, the chaplain played a role in acquainting each new boy with the institution and in consoling inmates concerned about illness or unhappy conditions at home. At Whittier, however, there was never much doubt that the Bureau of Research rather than the chaplain provided the critical guidance in planning and implementing Nelles's correctional philosophy. Science more than religion was designed to be the source of moral authority at the Whittier School.

No theory of effective programming for a juvenile reformatory, however committed to educational principles and clinical diagnosis, could realistically fail to incorporate a strategy for dealing with recalcitrants. Nelles delegated most authority for punishing misbehavior, but he eliminated all corporal punishment and was consulted before the most serious punishments were meted out. Homosexual activity generally received the most severe punishments at Whittier, followed by escape or attempting to escape, and egregious insubordination. Smoking, stealing, and fighting were dealt with less harshly.

The most common disciplinary measure was deprivation of privileges, such as requiring a boy to sit on a bench while his cottage mates played, or denying attendance at a motion picture or athletic contest. More serious recalcitrance was met by removal of an inmate from his own cottage to a special "lost-privilege cottage," where the atmosphere was less home-like, play was limited to 15 minutes, and work involved heavy physical labor rather than vocational training. Neither food provisions nor school attendance was affected by assignment to the lost-privilege cottage. The most severe punishment--one very rarely used--was assignment to one of four "quarantine" rooms in the lost-privilege cottage, where boys were totally isolated. However, they received normal food provisions and were regularly interviewed to determine whether they were ready to resume normal activities. Nelles's scheme of punishment was considerably less harsh than was common in other juvenile reformatories at the time.

Fred Nelles truly expected to work miracles with the boys under his control, and he elaborated a coherent correctional philosophy and program to show how he intended to achieve his goals.[20] Until near the end of his administration, however, he devoted little thought to the whole issue of aftercare or, as he preferred, "placement." It was as if the educational miracle he expected to work within institutional walls--generally over a two-year period--would be impervious to later corruption by outside forces, although most inmates would return to their former homes and schools. To be sure, Whittier had a "placement supervisor" who maintained correspondence with some 200 former inmates scattered throughout the state, and who occasionally visited them. The placement supervisor regularly reported that around 70 percent of the released inmates were "doing well." Nelles interpreted these reports as reason to celebrate his treatment regime, not to question their empirical base. He was far more interested in the development of new community-based institutions (24-hour and adjustment schools) than in the elaboration of aftercare.

Only in 1926, when questions were beginning to be raised nationwide about the validity of parole data, did Nelles sound an alarm regarding aftercare of Whittier inmates. "One man is now making a vain effort to properly supervise over two hundred boys scattered from San Diego to Siskiyou and from the foothills to the sea," he observed. "It cannot be done successfully, and no doubt disaster in certain cases has resulted. The investment of time, money, and effort in boys trained at Whittier, and the hazard of failure, is too great to have the condition continue."[21] In addition to requesting additional placement supervisors, Nelles (following the advice of his research staff) also called for the creation of a "home rehabilitation worker" to investigate the home situation of inmates soon after their arrival at Whittier. The object was to uplift the home and teach parents to properly care for their child after his release, at the same time that Whittier was rehabilitating him. In addition, Nelles suggested, "the value of preventive work accomplished by anticipating and preventing delinquency in other members of the family, of itself will undoubtedly more than justify the creation of this department."[22]

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[20] Again, we are begging the question of whether Nelles successfully implemented his treatment philosophy, or whether the inmates under his charge were, by any empirically valid measure, "rehabilitated."

[21] *Third Biennial Report*, p. 51.

By 1928, two additional placement supervisors had been added to the staff, as well as a psychiatric social worker to pursue "home rehabilitation." Clearly, though, aftercare was little more than an afterthought in Nelles's theory of effective programming. What transpired within the boundaries of his "progressive" institution, not what happened to inmates after their release, was his nearly exclusive concern.

In sum, the Whittier School embodied several features that distinguished it in the eyes of contemporaries as an unusually "progressive" juvenile reform school. Its diverse features set Whittier apart radically from the institution Nelles took over in 1912 and exemplified "progressive" thinking in American juvenile corrections in the 1920s: its credo of "individualization"; its substantial control over admissions; its unusually small cottage residences staffed by married surrogate parents; its lack of walls; its incorporation of clinical diagnostic techniques as routine service; its sponsorship of research into the causes of delinquency as integral to its mission; its close links to prominent academics in all phases of institutional life; its conception of corrections as fundamentally an educational problem, and of juvenile reformatories as special schools properly under the authority of education rather than penal authorities; its balancing of academic and vocational training; its extensive academic program, combined with bold pedagogic experimentation for youth with long records of school failure; its wide range of vocational training opportunities; its highly developed athletic and recreational programs; its prohibition of corporal punishment and its fairly mild disciplinary apparatus; its regular exposure of inmates to outsiders through athletics and recreational events; its ability to attract private sector subsidy of institutional activities; and its deemphasis of religious ministration in the therapeutic process.

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[22] Ibid., p. 53.

The treatment regimen of the New York House of Refuge in the 1920s had changed in several notable ways since the latter part of the 19th century, when the institution was regularly embroiled in scandal. Contract labor had been eliminated on the grounds it was exploitative and failed to teach inmates trades. Corporal punishment had been proscribed as inhumane and unnecessary. Proselytizing of Catholic inmates had been reduced. Health and sanitary provisions had been improved substantially.[23] Still, compared with the Whittier School, the theory of effective programming at the House of Refuge embodied all that was anathema in "progressive" correctional philosophy.

To be sure, there were some points of apparent similarity. Like Whittier, the House of Refuge had introduced a psychologist (though not a full-fledged clinical diagnosis and research unit) to test inmates and advise on institutional assignments. There was also a wide array of vocational training programs, athletic facilities, and musical presentations. Discipline at both institutions emphasized deprivation of privileges. Finally, the superintendent of the House of Refuge insisted that rehabilitation was his only goal and that education was his principal tool.

> The Institution is not a place of punishment, nor a prison, but a training school, where the inmates receive such instruction and training as are best adapted to form and perpetuate an upright character; to establish habits of industry; and to advance them in the branches of knowledge taught in the common schools of this state.[24]

Differences in almost every aspect of treatment design, however, were far more manifest. Most basic were the facilities. Inmates were housed in huge, barracks-like, congregate dormitories that had been erected in 1854. They represented the antithesis in early 20th century correctional ideology of the small cottage-type residences at Whittier. Regular institutional guards rather than surrogate mothers and fathers provided everyday supervision. Moreover, the facility was isolated on Randall's Island and so provided little opportunity for inmates to experience regular contact with youth or adults on the outside.

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[23] Pisciotta, passim.

[24] Managers of the Society for the Reformation of Juvenile Delinquents, *One Hundred and First Annual Report* (1925), p. 74.

Second, a military atmosphere pervaded every aspect of daily life. Inmates and their keepers wore uniforms and marched everywhere in formation, in addition to an hour's daily full-dress drill. Military drill, stated the superintendent, "gives a smart carriage to the boys and the system inculcates habits of neatness and respect for discipline and *esprit de corps*."[25] Military assignment also formed the essence of the institution's intake procedure. New inmates were assigned to the "awkward squad" for the first three weeks where they drilled five hours per day while learning the rules of institutional behavior. According to the superintendent, the House of Refuge modeled itself on private military schools.

Educational programs at the two institutions also differed substantially. Whittier included maintenance tasks as an integral, coordinate part of trade instruction, but at the House of Refuge trade training was close to being identical with institutional maintenance. There were virtually no hired workmen at the House of Refuge, the superintendent boasted, because inmates supplied all the necessary labor as part of their vocational instruction. Inmates were kept perpetually busy with repairs just to keep the facility from falling apart.

Interestingly, and opposite from the case at Whittier, academic instruction was increasingly de-emphasized at the House of Refuge in the 1920s. This resulted in part from the introduction of psychological tests. Intelligence tests revealed, as they had at Whittier, that inmates scored at disproportionately low levels. But the superintendent of the House of Refuge, unlike Nelles, was unable to weed them out of his institution. With the inmates' IQ scores in hand, the superintendent concluded that stress on academics was a waste of time, if not positively cruel.

> Almost without exception these boys have reached their limits . . . . A maximum of an hour or an hour and a half of classroom studies a day is all that shall be expected of this type of boy. More than this is useless. It is humiliating

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[25] Ibid., p. 78.

> and discouraging and often results in destructive anger. To urge these individuals to concentrate beyond their ability assumes the nature of punishment.[26]

Although the Refuge continued to offer an abbreviated academic program, it relied entirely for instructional materials on the New York City school system, and did not, the principal noted with regret, adapt them adequately to the inmate population. Unlike the situation at Whittier, the correctional setting was not viewed as an opportunity for pedagogic innovation.

The differences were manifest in all the details of the two institutions' daily operations, but one additional difference needs special highlighting, for in this regard the House of Refuge may have embodied current "progressive" correctional philosophy more faithfully than did Whittier.

In New York, aftercare had long been major responsibility and preoccupation of the superintendent and his staff. He developed an elaborate, prison-like "mark" system to encourage inmates from the day they arrived to do what they could to decrease their length of stay. Unlike Nelles, he appears to have held few illusions that incarceration could be a wholly positive, character-transforming experience, and considered it an essential component of his institutional responsibility to secure and verify inmates' good behavior after release. The superintendent emphasized to inmates that whatever their age upon release, they remained formally on parole from the institution until 21, and that they would be re-committed without hesitation if they disobeyed parole regulations.

After a boy's incarceration, a parole officer investigated his home situation in order to make that information an integral part of the institution's knowledge about him. Long before a parole date was set, and as long as the home was suitable, the parole officer contacted the boy's parents or guardians and worked with them to find him suitable employment (assuming that he was beyond compulsory school age, as most inmates were). Employment became the single most important criterion for determining release and remaining on parole. "You are to go at once to the employment selected for you and must not change your work without permission of the superintendent," read the instructions every parolee received. "If for any cause you lose your position you are to notify the superintendent at once. . . ."[27] Each parolee had to submit a monthly report, signed by both his parents and his employer, that he was still regularly engaged in the occupation selected for him before release.

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[26] Cited in Pisciotta, p. 185.

Short of far more elaborate research than we have undertaken here, we have no way to judge whether this systematic parole procedure was successfully implemented, or whether parolees from the House of Refuge fared better or worse than their counterparts at the Whittier School. For present purposes, the most interesting point is how loosely coupled the entire concept of parole appears to have been to "progressive" theories of effective programming in the 1920s. Whittier, which epitomized avante-garde correctional philosophy, was a laggard in developing systematic aftercare, whereas the House of Refuge, which epitomized old-fashioned correctional philosophy, had long considered supervision after release a key institutional responsibility. Whether "progressives" integrated aftercare into their philosophies in ensuing decades, or whether their focus remained wholly on what transpired within the boundaries of their own institutions, remains an intriguing question.

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[27] Managers, p. 73.

V. CONCLUDING OBSERVATIONS

This essay has examined the clientele and the theories of effective programming of two prominent state training schools in the 1920s. The highly selective, exploratory nature of our study prevent systematic comparisons between past and present. Nonetheless, we can make several observations.

1. The youths committed to state training school in the past appear to differ considerably from their counterparts today, not only in their ethnic/racial composition but in their behavioral characteristics and processing by the courts. By and large, the inmates in the 1920s were not as violent or as involved in drugs (as sellers or users) as those in state training schools today. Inmate populations in the past were also more varied with regard to age and offense history. Purely dependent or neglected youngsters were much more likely to mix in the same facilities with mature adolescent criminals. The same data further suggest that courts are considerably more reluctant today to commit criminally active youths to secure institutions. The exceptional cases in the 1920s--those youths who accumulated a long string of fairly serious "priors" before being incarcerated--have become much more the rule today. The sources, extent, and timing of this key shift in judicial decisionmaking warrant intensive analysis in future research.

2. The "progressive" philosophy of such early 20th century practitioners as Fred Nelles has little resonance in the field of juvenile corrections today. This is surely due, at least in part, to changes in the clientele of state training schools. Nelles himself worked diligently (as we saw) to eliminate from his institution youths whose genetic makeup or hardened attitude made them unlikely candidates for rehabilitation. Nonetheless, it is unfortunate that the range of innovative correctional ideas and practices propounded by Nelles and other "progressives" have either been forgotten or are wholly devalued today. Certain elements in his theory of effective programming--e.g. sponsorship of research as an integral institutional responsibility, viewing institutions as opportunities for radical pedagogic

experimentation, attracting private sector subsidy of institutional activities--merit more serious consideration than they have received. Moreover, they are not necessarily inconsistent with the belief that the primary aim of institutions for delinquent youth is punishment.

3. The loose coupling of aftercare to institutional treatment remains today, as in the past, one of the most troublesome elements in American penology. Correctional institutions, particularly those for juveniles, have all too often been viewed by "progressives" and "conservatives" alike as if they were self-contained facilities that could adequately fulfill their societal mission--whether rehabilitation or punishment--without serious concern for what happened to inmates after release. It was thus fascinating, if not entirely surprising, to see that the superintendent of the New York House of Refuge saw aftercare as more central to his institutional responsibility than did Nelles. Whatever purposes society may assign to training schools for serious juvenile offenders in the future, it is essential to recognize and move beyond the long-term historical trend of treating aftercare as a mere afterthought in correctional programming.

CHAPTER III

CYCLES OF REFORM IN YOUTH CORRECTIONS: THE STORY OF BORSTAL

by

Gordon Hawkins

and

Franklin E. Zimring

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I. THE STORY OF BORSTAL

The English Borstal system was an early effort to tailor correctional programs for young offenders that spans an unusually long period. It is also, as such programs go, extremely well documented throughout its long history and successive stages of program emphasis and apparent effectiveness. Many of the generations of Borstal administration available for study fall in the mid-century period that is usually not treated as history but is often ignored in contemporary surveys of practice. This paper is an attempt to provide a perspective on Borstal that illuminates current debates about correctional reform in Europe and the United States.

The English Borstal system was described in 1965 by Leon Radzinowicz as "one of the most significant contributions made by this country to the penological theory and practice of the twentieth century."[1] It had been established as an experiment at the dawn of the century in 1900. It stood at the height of its reputation and apparent success in the years immediately before World War II. With a nonreconviction rate as high as 70 percent after a two-year follow-up, it was widely regarded as a panacea for juvenile crime.

After the war, the situation changed. By 1950, the two-year nonreconviction rate had fallen to 51 percent. By 1965, at 36 percent, it was only just over half what it had been in 1936. Finally, under the 1980 Criminal Justice Act, the Borstal system was abolished.

Although a good deal has been written about the Borstal system, including an excellent study by Roger Hood,[2] no full account of its rise, decline, and fall has been published. This would hardly matter if Borstal were merely an example of what has been called "the panacea phenomenon."[3] But it was much more than that, and the following brief appraisal is no substitute for the kind of detailed historical review and critique it deserves.

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[1] Leon Radzinowicz, "Foreword" to Roger Hood, *Borstal Reassessed*, Heinemann, London, 1965, p. ix.

[2] Roger Hood, *Borstal Reassessed*, 1965, n. 1 at p. xii.

[3] James V. Findkenauer, *Scared Straight and the Panacea Phenomenon*, Prentice Hall, Englewood Cliffs, N.J., 1982, pp. 3-28.

The Borstal system lacked the defining characteristics of the true panacean program: preposterous theoretical foundations, totally unrealistic expectations, and a brief life span. On the contrary, the assumptions on which it was based were not unreasonable; no spectacular results were initially expected; and it continued in operation for over three-quarters of a century.

The system arose from a recommendation of the Gladstone Committee in 1895. Although it was extremely critical of existing methods of treatment for young offenders, the Committee seems to have possessed few illusions and to have entertained no extravagant hopes. "It is easy," its report said, "to find fault, to form ideal views, and to enunciate lofty speculations as if they were principles arrived at by experience." In regard to its own recommendation, the report said modestly, "Even a moderate percentage of success would justify much effort and expense."[4]

The Committee had been concerned at the large numbers of young offenders who were committed to prison and treated as adults. At that time there was no special form of treatment for offenders between 16 and 21, and all those over 16 were committed to prison. "Under the present system, numbers of them come out of prison in a condition as bad or worse than that in which they came. They go out with the prison taint on them." It was also convinced that "the ages when the majority of habitual criminals are made lies between 16 and 21."[5]

The Committee's recommendation, which led to the establishment of the Borstal system, ran as follows:

> We are of the opinion that the experiment of establishing a penal reformatory under Government management should be tried. It should be begun on a moderate scale, but on a design which would allow a large expansion if the results were proved to be satisfactory. The Court would have the power to commit to these establishments offenders under the age of 23, for periods of not less than one year and up to three years, with

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[4] Great Britain, Home Department, *Report of the Departmental Committee on Prisons* (The Gladstone Report), CMD 7702, 1985, para 84, p. 30.

[5] Ibid., 84 and 84(b), pp. 30-31.

> a system of licences graduated according to sentence, which should be freely exercised. . . .
>
> The penal reformatory should be a half-way house between the prison and the reformatory. It should be situated in the country with ample space for agricultural and land reclamation work. It should have penal and coercive sides which could be applied according to merits of particular cases. But it should be amply provided with a staff capable of giving sound education, training inmates in various kinds of industrial work, and qualified generally to exercise the best and healthiest kind of moral influence."[6]

The Committee had apparently been impressed by a report on the New York State Reformatory at Elmira, which claimed that "probably about 80 percent of the prisoners are reformed."[7] And in 1897, E. Ruggles-Brise, recently appointed Chairman of the Prison Commissioners, visited Elmira and spent some time there. He was not unimpressed but reported that there was "much in the system that is extravagant and to English ideas nearly approaching the ridiculous." He thought the system represented a "bold experiment" but was firmly opposed to "imitating their methods."[8]

The history of the Borstal system can be conveniently divided into three periods: 1900-1921, 1922-1947, and 1948-1980. During the first period, English prison and Borstal administration was dominated by Sir Evelyn Ruggles-Brise; during the second, by Sir Alexander Paterson; and during the third, until his retirement in 1960, by Sir Lionel Fox. All three were prison commissioners (both Ruggles-Brise and Fox being chairmen of the commission for long periods). All three were closely involved with the development of the Borstal system and wrote about it at some length.[9]

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[6] Ibid.

[7] Ibid., Appendix 1, Addendum on Elmira (C. 7702-1), p. 526.

[8] Evelyn Ruggles-Brise, *The English Prison System*, Macmillan, London, 1921, p. 92.

[9] See Ruggles-Brise, Chap. VIII; London, Alexander Paterson, *Principles of the Borstal System* HMSO, 2nd revised ed., London, 1932; S. K. Ruck (ed.), *Paterson on Prisons*, Muller, London, 1951; Lionel Fox, *The English Prison and Borstal Systems*, Routledge & Kegan Paul, London, 1952.

1900-1921

There was certainly nothing "extravagant" about the system devised by Ruggles-Brise. He defined the type of offender with whom it was designed to deal as follows: "Our object was to deal with . . . the young hooligan advanced in crime, perhaps with many previous convictions, and who appeared to be inevitably doomed to a life of habitual crime."[10] This definition was elaborated in official reports in the first decade of the century as including "the worst products of the evil influences of the London streets . . . dangerous young criminals . . . rebellious characters . . . hardened in vice . . . reckless, wayward, and uncontrollable young lads . . . stubborn, unruly, and criminal youth . . . misdirected youth rebelling against the law."[11]

After an initial small scale experiment with young prisoners at Bedford prison, a part of an old convict prison at the village of Borstal in Kent (from which the system took its name) was set aside in 1902 for an experimental regime of work, physical fitness, and educational activities. The whole prison was taken over in 1909. In the meantime, something called the "modified Borstal system" had been introduced to provide a similar regime for offenders aged 16 to 20 in ordinary prisons. The modified system was abandoned in 1911 when all Borstal youths were concentrated in the original Borstal and in a new institution opened at Feltham, previously an industrial school. Until 1921, when another convict prison at Portland was opened as a Borstal, there were only two institutions.

The fundamental principles of the new regime were defined in the prison commissioner's report for 1900-01 as: "(1) strict classification; (2) firm and exact discipline; (3) hard work; (4) organized supervision on discharge."[12] In practice, the regime consisted of strict discipline, physical drill and gymnastics, basic education, some trade training, and a grade system whereby the individual gained privileges and promotion by earning marks for good conduct and hard work. Brisk discipline and hard work were seen as "character building."

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[10] Ruggles-Brise, p. 99.

[11] Hood, p. 95. The quotations are culled from the first *Annual Report of the London Prison Visitors' Association*, 1901, and the *Prison Commissioners' Reports* between 1899 and 1910.

[12] Great Britain Home Office, *Report of the Prison Commissioners*, 1900-01, HMSO, London, 1902, p. 13.

The legal basis of the sentence of Borstal detention was first laid down in Part 1 of the Prevention of Crime Act 1908 as follows:

> Section I (i)
> Where a person is convicted on indictment of an offence for which he is liable to be sentenced to penal servitude or imprisonment, and it appears to the court --
> (a) that the person is not less than sixteen or more than twenty-one years of age; and
> (b) that by reason of his criminal habits or tendencies, or associations with persons of bad character, it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime;
> it shall be lawful for the court, in lieu of passing a sentence of penal servitude or imprisonment, to pass a sentence of detention under penal discipline in a Borstal Institution for a term of not less than one year nor more than three years.

Within the maximum imposed by the court, the sentence was indeterminate because at any time after six months, inmates could be released on license and be placed under supervision until six months after their original sentence expired. The license could, however, be revoked for misconduct and the individual concerned be recalled for three months further detention. As subsequently amended by the Criminal Justice Administration Act 1914, the minimum length of sentence was increased from one year to two, the period of supervision on release increased to one year, and the maximum length of recall to one year.

The break with the established tariff system of sentencing under which it was rare for young offenders to receive such lengthy sentences was based on a rationale expressed by Ruggles-Brise as follows:

> It soon became clear that the element of time, that is, a longer sentence than the law permitted, was essential for the success of the scheme. Experience showed that something may be done in twelve months, little or nothing in a shorter period, that the system should be one of stern and exact discipline, tempered only by such rewards and privileges as good conduct, with industry, might earn: and resting on its physical side on the basis of hard, manual labour and skilled trades, and on its moral and intellectual side on the combined efforts of the Chaplain and the Schoolmaster. Such a sentence should not be less than three years, conditional liberation being freely granted, when the circumstances of any case gave a reasonable prospect of reclamation.[13]

It is difficult to determine how far the recommendations of the Gladstone Committee or the ideas enunciated by Ruggles-Brise and reflected in the legislation were carried into practice in the period up to 1921. As to Ruggles-Brise's first principle, "strict classification," no system of classification was developed within institutions or between the only two institutions that were available. Moreover, there was considerable confusion about who was eligible for Borstal. As Roger Hood puts it:

> The 1908 Act explicitly stated that the offender must have criminal habits or tendencies or associations with persons of bad character. The problem seemed to lie in the definition of the term "tendencies" and in the use of the conjunction "or." Did the clause mean that an offender with only criminal "tendencies" was eligible? And how could they be defined or proved? Did it mean that an offender with no criminal habits or tendencies could be sentenced to Borstal if it was proved that he associated with persons of bad character? And how close or continuous did the association have to be? These problems were continuously raised.[14]

Moreover, although the firm discipline and hard work (including the agricultural work specified by the Gladstone Committee), postulated in the second and third principles seem to have been provided, the training of inmates in skilled trades was extremely limited: "A few boys may have learned the rudiments of a trade which they could pursue on release, but for most the work was ordinary manual labor."[15] In fact, such evidence as is available suggests that Margery Fry's description of the Borstal training in its earlier years as "a regime closely resembling prison life" was accurate. It was only in its second phase (1922-1947) that she came to see it as a "great experiment."[16]

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[13] Ruggles-Brise, p. 93.

[14] Hood, pp. 28-29; see also pp. 30-31, 39, 50-57, and 70-71.

In addition to the regime within institutions, the Gladstone Committee had recommended "special arrangements . . . for receiving and helping the inmates on discharge."[17] In order to implement this, a voluntary organization called the Borstal Association was formed with the object of giving support to, and helping to resettle in the community, those discharged from Borstal. In addition to aftercare, the Association was given the function of the supervision of offenders released on license under the 1908 Prevention of Crime Act. A system of associates was formed all over the country so that discharged inmates would always have a friend and supervisor wherever they lived. The annual reports of the Association provided information regarding reconvictions.

Anyone attempting to assess the effectiveness of the Borstal system in its early years must be struck by the contrast between the abundance of favorable judgments on, and almost euphoric claims for, the system and the paucity of evidential justification for either. As early as 1910, *The Times* desribed Borstal as "the bright spot on the horizon of future prison administration."[18] In 1911, Ruggles-Brise claimed that the "success of the last 12 months has been 82 percent."[19] In 1914, Reginald McKenna, the home secretary introducing the Criminal Justice Administration Bill, claimed that "the number of failures is very small." He could not, however, provide precise figures because, he said, "There is a number which we are not certain about, and we cannot say what has become of them. There is a considerable number who have gone to sea, and we could not give with any certainty a percentage as to the number who have come through satisfactorily."[20]

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[15] Ibid., p. 27.

[16] Margery Fry, "The Borstal System," in L. Radzinowicz, J. S. Cecil Turner, and P. H. Winfield (eds.), *Penal Reform in England*, P. S. King, London, 1940, pp. 128 and 151.

[17] The Gladstone Report, para 846, p. 31.

[18] *The Times* (London), "Prison Life and Administration V--The New Departure," June 7, 1910, cited in Hood, p. 23.

[19] Ibid., Reported Statement by Sir Evelyn Ruggles-Brise, May 13, 1911.

This uncertainty about exact figures does not seem to have inhibited Ruggles-Brise unduly. In *The English Prison System*, published in 1921, he claimed that since 1908 only 27 percent of those discharged from Borstal had been reconvicted.[21] Nor did it greatly worry Alexander Paterson, former Assistant Honorary Director of the Borstal Association, appointed as a prison commissioner with special responsibility for Borstal in 1922, who claimed in 1923 that "the effect of the Borstal institutions was seen in the halving of the prison population at Dartmoor and the closing of Portland Convict Prison."[22]

Such criticism as there was was not directed at the prison commissioners' methods of recording, presenting, and interpreting statistics. In their influential *English Prisons Today,* 1922, Hobhouse and Brockway were extremely critical of the Borstal training regimes which demanded only mechanical obedience.[23] As also was the Honorary Director of the Borstal Association, Wemyss Grant-Wilson, who, after Ruggles-Brise's retirement in 1921 wrote to Maurice Waller, the new chairman of the prison commission that

> under their late chairman, the commissioners have not taken a sufficiently serious view of their responsibilities. They have not provided in Borstal institutions something sufficiently different from prisons to render justifiable the long sentences to Borstal treatment which are given as an alternative to shorter sentences of imprisonment.[24]

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[20] *House of Commons Debates*, Vol. 61, cols. 198-199, April 15, 1914.

[21] Ruggles-Brise, p. 95.

[22] *The Times* (London), Report of speech by Alexander Paterson, April 27, 1923.

[23] Stephen Hobhouse and A. Fenner Brockway, *English Prisons Today*, Longmans Green, London, 1922, pp. 416-418.

[24] Hood, p. 172.

1922-1947

Rupert Cross says of Alexander Paterson that although he "was never chairman of the prison commissioners, it is customary to speak of the period 1922-1947 as the "Paterson regime."[25] Appointed as a commissioner in 1922, he retired in 1945 but continued to work in an advisory capacity until his death in 1947 when Sir Alexander Maxwell, then permanent Under Secretary at the home office, wrote, "To his imagination and inventive force we owe almost all the schemes of penal reform which have been developed in this country in the last twenty-five years."[26] Sir Lionel Fox wrote of his "rich contribution to the revolution in the spirit of our prison and Borstal systems."[27]

Obituary testimonials are not among the most reliable kinds of evidence, but there is no doubt in this case that Paterson was imaginative, innovative, and extremely energetic. In 1921, when he was Assistant Director of the Borstal Association, he had prepared a resolution to the Executive Committee deploring "the inadequacy of the present system of training" and suggesting the appointment of "a special Borstal commissioner."[28] In 1922, in that office himself, he immediately set out to transform the system.

He did not believe that the methods of training until then employed in Borstal institutions, which involved strict control to enforce obedience and submission to authority, helped to develop character or self-control. This method, he maintained, involved treating the individual "as though he were a lump of putty," which had to be reduced to "a certain uniform shape by . . . continuous pressure of authority without."

As a result

> In course of time, by perpetual repetition, he forms a habit of moving smartly, keeping himself clean, obeying orders, and

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[25] Rupert Cross, *Punishment, Prison and the Public,* Stevens, London, 1971, p. 29.

[26] Cited in Fox, p. 73.

[27] Ibid., p. 74.

[28] Hood, p. 172

> behaving with all decorum in the presence of his betters. They are in themselves very useful qualities, and it is hoped by those who use this system that, after some years of constant admonition and daily habit, all lads will retain the same pleasing shape when no longer subject to the pressure of those in authority. But the springs of action lie deeper than the laws of habit or the voice of the mentor are likely to reach, and character is determined ultimately not by the outside shape that has been fashioned, but by powers within that possibly have not been touched. It happens, therefore, sadly often that the lad who has been merely subjected to the pressure of authority from outside will, when exposed to different influences of free life, assume quite another shape. In other words having been treated like a lump of putty, he will behave like a lump of putty and respond successively to the influences of each environment.

The correct method of training the juvenile offender, he maintained, was

> to regard him as a living organism, having its secret of life and motive power within, adapting itself in external conduct to the surroundings of the moment, but undergoing no permanent organic change merely as a result of outside pressure. . . . as a lad of many mixtures, with a life and character of his own. The task is not to break or knead him into shape, but to stimulate some power within to regulate conduct aright, to insinuate a preference for the good and clean, to make him want to use his life well so that he himself and not others will save him from waste.[29]

The model that Paterson adopted in order to effect the translation of this concept of training into an institutional regime was that of the English public school--which is in fact a private school. Roger Hood has ably summarized what this meant in practice:

> Hard work remained as an important element of the system, but in order to encourage the change in the delinquent--through self-discipline--new elements were added to the training regime. The staff of the institutions gave up their uniforms for plain clothers; matrons were appointed; the institutions were organized into "houses" along public-school lines; new

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[29] Ruck, p. 97.

> men were brought in from the universities and public schools to be housemasters; the regime gave the boy more scope to exercise his responsibility; outside activities were encouraged, and the educational element was broadened beyond the basic learning of the three R's. Despite the "liberalizing" of the regime there was no intention to "pet or pamper" the inmates. As the Home Secretary said: "We do not give them a moment in which to get into mischief or to be idle." The emphasis was still upon discipline and the learning of general mortality," but the methods had been changed. The staff and the house system became a dynamic element in the effort to change criminal ways. Previously, the work of "tutors" and chaplains had been directed towards "moral exhortations," but now the personal example of the staff and the team spirit of inter-house rivalry were used as a dynamic element in effecting attitude change.[30]

In 1921, a third Borstal was opened at Portland (Dorset) in an old convict prison. All of these adopted buildings were reconstructed to serve their new purposes, and all had extensive farms or market gardens outside the walls where inmates were employed. No further institutions were opened until 1931. In 1930, however, Paterson, one of whose best known aphorisms was, "It is impossible to train men for freedom in a condition of captivity,[31] initiated a new development. A party of inmates from the closed institution at Feltham in the South of England marched north to Lowdham (Nottinghamshire) where on an open site, living in an old farm house in tents, they began to build the first Borstal without bars. "The placing of young adult recidivists in open institutions," says Roger Hood, "was certainly a revolutionary move in English penological history."[32] During the 1930s, another three open institutions were set up.

By 1939, the Borstal system consisted of five closed institutions and four open institutions. In addition, there was a reception and allocation center and a revocation or recall center both situated in prisons. At the end of 1938, the daily average population in male institutions had reached over 2000 with approximately 17 percent in open institutions. In September 1979 at the outbreak of war, all youths who had served more than six months were discharged, and the daily average population fell from 2020 in 1938 to 1044 in 1940. This mass discharge was followed by the loss of a high proportion of the trained and experienced staff to military service.

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[30] Hood, p. 108.
[31] Paterson, p. 12.
[32] Hood, p. 116.

During the war, the Borstal population rose steadily from 1044 in 1940 to 1623 in 1944. In 1946, four new open institutions were established as well as a new classification center. In 1946, 46 percent of 17 to 21 year olds convicted of indictable offenses in the higher courts were sentenced to Borstal, and only 7 percent to prison. By 1948, the total daily average population had reached 2885, of whom approximately 35 percent were in open institutions.

The war, however, radically changed the whole nature of Borstal training. In 1952, Fox wrote, "It is to be doubted whether the Borstal system has even yet recovered from that shock."[33] What it meant is described by Roger Hood as follows:

> The mass discharge of boys in 1939 and the loss of experienced staff to the forces meant that house traditions were destroyed. The institutions were forced to run on limited lines. A number of borstals were closed and training became as brief as possible due to the shortage of accommodation and the Commissioners' policy of releasing boys early to aid in the war effort.
>
> The basic principles of training did not change; it simply became impossible to put them into practice. On the work side, training ceased entirely, as the workshops made production their main aim. Since most of the boys were to be released into the forces, military discipline would take over from borstal discipline, and the considerable problem of planning for release consequently vanished.[34]

Whether these changes were responsible for the increased proportion of youths reconvicted from 1942 until in 1946 it was over 50 percent for the first time in the history of Borstal, it is not possible to say. However, the statistics show that the proportion of youths reconvicted rose steadily from 1942 onward and never recovered.

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[33] Fox, p. 365.

[34] Hood, p. 133.

In assessing the effectiveness of the Borstal system in the period 1922 to 1947, it is not possible to provide a comparative analysis over the whole period. In the earlier years, figures for reconvictions were not always published, and it was not until 1932 that figures for the length of follow-up periods were reported. Moreover, it was not until 1935 that the police agreed to report all reconvictions up to five years after discharge beginning in 1931. In the years 1923, 1924, and 1925, the prison commissioners claimed nonreconviction rates for those released two years earlier of 75 percent, 67 percent, and 66 percent, respectively. But it is not until 1935 that genuinely comparable figures are available. Table 3.1 gives the available nonreconviction figures from 1934 to 1947.

Of the falling off in the nonreconviction rates in the war and immediate postwar years, Sir Lionel Fox wrote that "it was to be expected . . . taking account of the much larger numbers which were handled in conditions of the greatest difficulty." In fact, he suggests that it could have been much greater but for "the external conditions in war time, every fit young man going at once to active service in the armed forces or to other essential national work."[35] Roger Hood suggests two other factors that may have prevented the decline being more marked than the figures reveal. First, the proportion of reconvictions may have been underrecorded because of war time conditions; and second, the "misdemeanors of boys serving in the forces would not have counted among the reconvictions."[36]

Fox, however, remained sanguine about the future of Borstal. "The figures for the 1930s," he wrote, "show what the Borstal system had done and therefore what it can do again." "Let us hope," he wrote in 1951, "that when the figures for 1950 and 1951 come to be assessed, they will show that Borstal has fought its way back to at least its prewar standard."[37] But in fact the figures for 1950 showed a continuing

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[35] Fox, p. 400.
[36] Hood, p. 212.
[37] Fox, p. 400.

Table 3.1

BORSTAL NONRECONVICTION RATES, 1934-1947
(Rounded to nearest percentage point)

	Percentage Not Reconvicted		
Year	Number Released	Two Year Followup	Three Year Followup[a]
1934	900	66	61
1935	808	68	63
1936	818	70	--
1937	822	--	56 (6 years)
1938	919	--	64 (5 years)
1939 Jan-Aug	812	--	61 (4 years)
1939 Sept-Dec	2005	--	58 (4 years)
1940	843	--	54
1941	1014	62	58
1942	1381	65	61
1943	1414	60	56
1944	1236	60	55
1945	1279	60	54
1946	1858	55	46
1947	1856	54	48

SOURCE: Roger Hood, *Borstal Reassessed*, Heinemann, London, 1965, Table I, p. 208.

[a] Where only figures for longer followup periods are available, the length of followups is indicated in brackets.

decline, and the figures for 1951 were not published separately but grouped with 1949 and 1950 discharges.

1947-1980

Borstal never did fight its way back to its prewar standard. Table 3.2 continues the series given in Table 3.1 down to 1960.

The reasons for this apparent decline in the effectiveness of the Borstal system are a matter of speculation. There had been no fundamental change in character. Hood commented in 1965 that

Table 3.2

BORSTAL NONRECONVICTION RATES, 1948-1960
(Rounded to nearest percentage point)

		Percentage Not Reconvicted	
Year	Number Released	Two Year Followup	Three Year Followup
1948	1655	54	48
1949	1871	53	46
1950	1790	51	--
1951	1697	--	--
1952	1753	57	50
1953	1784	54	48
1954	1741	52	47
1955	1667	54	48
1956	1484	45	40
1957	1703	41	35
1958	2178	40	35
1959	3115	39	32
1960	3126	36	--

SOURCE: Roger Hood, *Borstal Reassessed*, Heinemann, London, 1965, Table I, p. 208. Hood writes that after 1960 the figures were no longer available in this form and "since 1962 no figures have been given."

> Sir Lionel Fox's authoritative statement of borstal training principles made in 1952 reads very much like the prewar writings of Paterson. Since 1952 there have been no revolutionary changes in the system . . . despite the appearance of group counseling, and some important shifts of emphasis, the basic structure of the system has remained much as it was when Sir Lionel wrote."[38]

The official explanation of the decline, which recurs in prison commissioners' reports in the postwar years, was that wartime conditions had produced a much more difficult type of offender than Borstals had hitherto dealt with. In their report to a departmental committee in 1951, the commissioners stated:

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[38] Hood, p. 142.

> The young men who are now in Borstals belong to the generation which suffered most the unsettling conditions of the war years. Evacuation, bombing, interrupted schooling, lack of proper parental control all helped to produce boys and girls who are not able, or are not disposed, to count the cost of their actions and are therefore more difficult to train. . . .
>
> The Borstal system was almost completely disintegrated during the war and there is even now a bare nucleus of staff who had experience of the system before the war.[39]

Fox's view seems to have been that the passage of time would take care of the problem. "The slow rebuilding of the prewar tradition and morale depends both on greater stability and responsibility in the young people received and on greater experience in the staff."[40] Hood agrees that "The boys received after the war were tougher and more undisciplined than those who had been to Borstal in the thirties. . . . At the root of the trouble there were fundamental changes in the problems and personalities of postwar youth, and in their reaction to a middle class moralizing system."[41] But he also says, "It cannot be argued from the fact that boys are responding less well to institutional training than formerly that they are 'inherently more difficult,' but only that they are more difficult to train under existing methods."[42]

A crucial question in evaluating the conclusion that youths had become "more difficult to train" relates to the meaning of that expression. The Mannheim-Wilkins prediction study, *Prediction Methods in Relation to Borstal Training*,[43] and based on the results of Borstal training, introduced for the first time a degree of objectivity into assessments of this nature. The Mannheim-Wilkins prediction table classified youths in terms of their potential future delinquency with a remarkable degree of accuracy, and it was adopted by the prison commissioners as a classification tool.

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[39] Great Britain Home Dept., *Report of the Committe to Review Punishments in Prisons, Borstal Institutions, Approved Schools and Remand Homes: Part II Borstal Institutions*, 1950-51, Cmd. 8256, HMSO, London, 1952, para 71.

[40] Fox, p. 389.

[41] Hood, p. 141.

[42] Ibid., p. 215.

[43] Herman Mannheim and Leslie T. Wilkins, *Prediction Methods in Relation to Borstal Training*, HMSO, London, 1955.

In their report for 1960, the prison commissioners pointed out that there had been a marked "deterioration in the quality of training material" since the end of World War II, when there had been a substantial increase in the proportion of receptions in the Mannheim-Wilkins C and D categories (those with the poorest prospects of success) and a parallel decrease in the proportion of receptions in the A and B categories (those with the best prospects of success). They concluded that the success rate was "likely to be under 40 percent."

Table 3.3 illustrates this development.

But the Mannheim-Wilkins study did more than provide a tool for classification and some support for the prison commissioner's contention about "deterioration in the quality" of their intake. In fact, it came to undermine one of the principal rationales of the Borstal system. Mannheim and Wilkins demonstrated that shorter periods of Borstal training (under two years) did not increase the inmate's chances of failure on release.[**] But the prediction technique also provided a tool with which to measure the effectiveness of different forms of treatment.

Table 3.3

BORSTAL RECEPTIONS, 1946-1960
(Percentages in Mannheim-Wilkins prediction categories)

Year	A and B Categories	C and D Categories
1946	32.7	25.5
1957	10.2	56.5
1960	9.9	66.4

SOURCE: Great Britain, Home Department, *Report of the Commissioners of Prisons 1960*, HMSO, London, 1961, p. 35.

[**] Ibid., p. 120.

In other words, it became possible to investigate the claim that Borstals were much more effective than prisons. And in 1958 George Benson carried out a study in which using the Mannheim-Wilkins prediction classification he matched Borstal inmates and young prisoners and compared the results of the respective methods of treatment as measured by reconviction rates. He concluded that it was impossible to distinguish between the results of short-term imprisonment and Borstal.[45]

In 1961, a new Criminal Justice Act was passed that merged imprisonment and Borstal training, and the distinction between their roles was abandoned. Borstal and Young Prisoners' Centers were combined with a single indeterminate sentence of between six months and two years. "By 1960," says Roger Hood, "Borstal was no longer a term describing a unique and progressive experiment in the treatment of young offenders."[46] Finally, the Criminal Justice Act, 1982, abolished Borstal and replaced it with a determinate term of youth custody subject to a maximum of one year.

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[45] George Benson, "Prediction Methods and Young Prisoners," *British Journal of Delinquency,* Vol. 9, No. 3, 1959, p. 192.

[46] Hood, p. 92.

II. CONCLUSION

To regard the history of the Borstal system as simply another illustration of Daniel Glaser's remark that "The highway of correctional history is paved with punctured panaceas"[1] would be a mistake. The system originated as a means of meeting one of the principal concerns of penal reformers in this century, which has been to keep serious juvenile offenders out of prisons. Moreover, for many years it provided a fairly decent and humane alternative to prison for young offenders "advanced in crime."

Two experienced American observers, William Healy and Benedict Alper, who made an intensive critical study of the Borstal system for the Criminal Justice-Youth Committee of the American Law Institute in the 1930s, observing its organization and operation at first hand, were convinced of "its extraordinary worth." They wrote of "the splendid work done throughout the Borstal system," praised "its formulation of sound principles and its flexible application of what has been learned through long years of practical experience" in the task of dealing "with serious offenders for the purpose of checking criminal careers."[2]

It seems certain that many of the claims made in the early years about "success rates" were grossly exaggerated. But the prewar average nonreconviction rate of 60 percent in the 1930s was probably as accurate as such indexes ever are. Healy and Alper, in their chapter on "Evaluating the Borstal System," wrote of the "high reliability" of the "estimates of success and failure" based on data derived not only from the Central Criminal Record Office but also obtained from parole agents and Borstal Associates. In their view, the estimates had a validity "fairly comparable to that of the Massachusetts Reformatory studies made by the Gluecks."[3]

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[1] Daniel Glaser, "Achieving Better Questions: A Half Century's Progress in Correctional Research," *Federal Probation*, September 1975, p. 3.

[2] William Healy and Benedict S. Alper, *Criminal Youth and the Borstal System*, The Commonwealth Fund, New York, 1941, pp. 230 and 234.

[3] Ibid., pp. 215-216.

Their conclusion was that the Borstal figures showed "the largest measure of favorable results from reformative treatment that appear validly established anywhere." And they point out that during the 1930s Borstal received 97 percent of all those youths between 16 and 21 sentenced to more than 12 months, at a time when the severity of sentences closely reflected the seriousness of the offenses.[4] Fox's observation that "given the records and characters of the young men who come to Borstals, most often after many other resources of our social, educational, and penal systems have failed to affect them, the standard [achieved in the 1930s] can be judged a high one"[5] seems reasonable.

Finally, it is notable that the "frankly critical and nondefensive attitude" that Healy and Alper found in the 1930s was "taken by all officials in the Borstal system"[6] persisted to the end. "The first major research project involving sophisticated statistical analysis to be born out of the postwar interest in criminology," Hood points out, "was a study of the results of Borstal training. It is of great significance that the first major expenditure on research should have been directed at the Borstal problem and that it should have been officially financed and published by the Home Office."[7] It is also perhaps of some ironical import that the results of that research should have been a major factor in bringing about the ultimate abolition of the Borstal system.

What lessons may be extracted from the story of the Borstal experiment? Four may be suggested. In the first place, Borstal during the 1930s can be seen as the precursor of more recent American programs for dealing with juvenile offenders (e.g. Visionquest).[8] Second, the history of Borstal reinforces the often learned and frequently forgotten lesson that the search for timeless remedies applicable to all generations of delinquents is illusory. Third, Paterson's emphasis on the importance of institutional morale rather than specific program content and his insistence "that it is through men and not buildings or regulations that this work must be done"[9] is one idea that probably does have timeless relevance. Finally, the atheoretical and pragmatic way in which the Borstal system was built and was ultimately abolished has much to recommend it.

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[4] Ibid., p. 220; see also Hood pp. 55-57.

[5] Fox, p. 400.

[6] Healy and Alper, p. 216.

[7] Hood, pp. 84-85.

[8] Peter W. Greenwood, et al., *Youth Crime and Juvenile Justice in California*, R-3016-CSA, The Rand Corporation, 1983, pp. 89-91.

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[9] Fox, p. 74.

CHAPTER IV

WESTERN EUROPEAN PERSPECTIVES ON THE TREATMENT OF YOUNG OFFENDERS

by

Gordon Hawkins

and

Franklin E. Zimring

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I. SCOPE AND LIMITS

This paper attempts to survey the English language literature on treatment of serious youthful offenders in England and Western Europe. The task can be justified on two grounds. First, the practices of other countries are one natural place to look for innovations in treatment of use in the United States. Second, the approach of other Western democracies to the problem of youth crime can provide a helpful comparative perspective in describing and evaluating parallel efforts in this country. All too frequently, discussion of youth crime policy in the United States assumes without evidence that our problems are unique and our institutional responses noncomparable to those of other nations.

In fact our survey discloses a substantial degree of parallel movement in governmental response to youth crime. Most other western countries have recently experienced the decline in confidence in youth correctional approaches that has characterized American dialogue over the past two decades. Our European counterparts have also suffered a shift in academic and research emphasis away from the search for special correctional solutions to youth crime. The important difference between American and European experiences concerns the political consequences of the decline of the rehabilitative ideal. The issue of youth criminality is far less politically important in Europe than in America, and the European systems of special treatment of young offenders appear less vulnerable to shifts in penal theory. There is to date no evidence from Europe of a necessary causal connection between a decline in faith in rehabilitative programs and the abolition or abatement of special programs for the youth.

The first section of this paper outlines the scope of our survey and gives a general sense of attitudes toward youth correction in Europe. A second section describes current practice in regard to the age groups eligible for special treatment and the content of youth correctional programs. A concluding section discusses trends in research as a leading indicator of the direction of future reforms.

Youthful misbehavior or misconduct of some kind is universal. But it is only in more advanced societies that juvenile delinquency, in particular serious juvenile crime, constitutes a serious social problem. In the more affluent, urbanized, industrialized nations of the West since World War II, it has been seen as an increasingly urgent one. It is therefore appropriate that those concerned about the problem should pay attention to the ways other countries deal with it.

The survey that follows is subject to specific limits and limitations. It is confined to English language sources and to Western governmental programs. It is in addition subject to a limitation that anyone engaged in delinquency research will have encountered. As Malcolm Klein has written, "Juvenile justice as an intellectual concern is the stepchild of criminology, an 'also-ran' in the race to achieve intellectual notice and legitimacy in the study of crime and justice."[1]

Klein notes, by way of example, that R. G. Rumbaut and E. Bittner's 1979 review of the police literature[2] is "virtually devoid of any mention of the police role with juvenile offenders" and that a 1981 volume on the world's major criminal justice systems[3] includes only "minuscule attention to juvenile matters."[4] This shortcoming is not confined to American writers or publications. The first six volumes of *Scandinavian Studies in Criminology*, published over years 1965 to 1978[5] contain a total of 58 articles, of which only five deal with juvenile delinquency. This may not accurately reflect the amount of criminological research devoted to juvenile rather than adult crime in the Scandinavian countries. There are criminological research institutes in all of them (Denmark, Norway, Sweden, and Finland) with the exception of Iceland, and it would be surprising if the disproportion found in the *Studies* were paralleled in their work. A survey of *The British Journal of Criminology* (formerly *The British Journal of Delinquency)* from 1974 to 1983[6] reveals a somewhat less marked imbalance. Nevertheless, of the 238 Original Papers published in that period, only 65, or just over one-quarter, dealt with juvenile matters, which is greatly out of proportion to the juvenile contribution to crime rates.

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[1] Malcolm W. Klein (ed.), *Western Systems of Juvenile Justice*, Sage, Beverly Hills, 1984, p. 7.

[2] R. G. Rambaut and E. Bittner, "Changing Conceptions of the Police Role: A Sociological Review," in N. Morris and M. Tonry (eds.), *Crime and Justice: An Annual Review*, Vol. 1, University of Chicago Press, Chicago, 1979, pp. 238-288.

[3] George F. Cole, Stanislaw J. Frankowski and Marc G. Gertz, *Major Criminal Justice Systems*, Sage, Beverly Hills, 1981.

[4] Klein, pp. 7 and 15.

[5] *Scandinavian Studies in Criminology*, Vol. 1, Tavistock, London; 1965; Vol. 2, Tavistock, London; 1968; Vol. 3, Scandinavian University Books, Oslo, 1974; Vol 5, Martin Robertson, London, 1974; Vol. 6, Scandinavian University Books, Oslo, 1978.

It is therefore not altogether surprising that paucity in both quantity and quality is the most striking feature of the available literature in the English language on foreign juvenile justice systems, governmental responses to juvenile misconduct, and programs that intervene in the lives of children and adolescents at risk. Indeed the scarcity of material suggests an almost xenophobic noninterest, on the part of English-speaking people, in anything transcending national boundaries. This ethnocentricity is not unique. Malcolm Klein, attending a 1981 international symposium on delinquency in West Germany, found that "most of the European participants, experts on their own national systems, were almost as unknowledgeable about their neighbours' systems as were the Americans."[7]

It is only within the last quarter of a century that there has been any considerable diminution in this chauvinism in relation to juvenile justice matters. One consequence of this is that the English language material on particular foreign systems is sparse and scattered. Another is that very few attempts have been made to adopt a synoptic or comparative approach to the different national systems of juvenile justice. Even the international organizations involved in this field have contributed little.

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[6] *The British Journal of Criminology*, Vols. 13 to 23.

[7] Klein, p. 8.

In 1963, the Council of Europe published a report entitled, *The Effectiveness of Programmes for the Prevention of Juvenile Delinquency.*[8] It is a somewhat bleak document based on a survey conducted under the auspices of the European Committee on Crime Problems and covering 13 European countries.[9] The study was primarily concerned with evaluating the effectiveness of prevention or reduction of juvenile delinquency and what findings were available on the success of the various measures taken so far. The following excerpt from the summary of "general findings" captures the tone of the report.

> This is virtually a "nil return." . . . It is impossible to draw meaningful general conclusions on the extent to which different methods of prevention have been found to be effective. Few, if any, of the measures subjected to research can be regarded as having demonstrated their degree of effectiveness on any firm basis. . . . The researchers reported are not sufficiently numerous, nor is our information sufficiently complete, to justify any firm conclusions.[10]

The author of this report seems to have felt that some hope for the future might be drawn from what was being done in America in relation to delinquency prevention and its evaluation. He approvingly quotes Professor Radzinowicz's assertion that "constant review of American methods and results is today essential to those seeking to advance criminology in any part of the world."[11] He states, "A glance at the American scene is both consoling and stimulating. It is comforting to find essentially the same problems being encountered there; it is encouraging to find much being done of which we in Europe can take advantage." He commends as "especially promising . . . the new Federal anti-delinquent program conducted under the auspices of the President's Committee on Juvenile Delinquency and Youth Crime" designed "to stimulate the development of comprehensive, co-ordinated community approaches to delinquency preventions."[12]

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[8] Council of Europe, European Committee on Crime Problems, *The Effectiveness of Current Programmes for the Prevention of Juvenile Delinquency,* Council of Europe, Strasbourg, 1963.

[9] Austria, Belgium, Denmark, Federal Republic of Germany, France, Greece, Italy, Luxembourg, Netherlands, Norway, Sweden, Turkey, and the United Kingdom.

[10] Council of Europe, 1963, pp. 7-8.

[11] Leon Radzinowica, *In Search of Criminology,* Harvard University Press, Cambridge, 1962, p. 170.

The Council of Europe's 1963 report was followed in 1967 by another also was based on a survey carried out by the European Committee on Crime Problems.[13] The principal feature of the report is a description and comparison of two different national systems of applying special short-term measures to young offenders: *Jugandarrest* in the Federal Republic of Germany and Detention Centres in the United Kingdom.

This document manifests what might be called dissociation between the findings and the principal recommendation. For example: "We find, on the basis of the very meagre research results, that there is no evidence to suggest that any one short-term treatment is more effective than any other." There was also no evidence to suggest that short-term treatment was more effective or even as effective as long-term methods.

The point is also made that "we consider that criminal policy should be rational and therefore based on factual knowledge. This knowledge can only be gained by more and better research work."[14] There is considerable emphasis on the constant need for the scientific evaluation of all that is attempted.

> In the general interest it is essential to improve the knowledge available on the effectiveness of treatment. To this end every effort should be made to keep the effectiveness of any short-term treatment measures employed under continuous review. This implies the keeping of appropriate statistics on basic information relating to the offenders and, wherever possible, investigation and evaluation by trained research workers.[15]

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[12] Council of Europe, pp. 86-87.

[13] Council of Europe, European Committee on Crime Problems, *Short-Term Methods of Treatment for Young Offenders,* Council of Europe, Strasbourg, 1967.

[14] Ibid., p. 84.

[15] Ibid., 22.

Yet having made it clear that the "factual knowledge" on which criminal policy should be based is lacking, the report's principal recommendation is, "Whenever appropriate and possible, short-term methods of institutional treatment for young offenders should be used in preference to long-term methods." It also recommended that "special establishments for such offenders should be set up which will provide a positive and suitable treatment for them, taking account of their age, state of development, and individual needs as far as is possible in the limited time available." What that "positive and suitable treatment" might consist of is not indicated beyond the assertion that "there should be flexibility and experimentation in the regimes used in these establishments."[16]

The hope that the New World might be called in to redress the balance of the Old recurs. A chapter is devoted to "Innovations in the United States of America with Short-Term Methods of Treatment for Young offenders."[17] The methods referred to are "group counselling" or "guided group interaction." The projects described are: the Highfields Center and similar centers in New Jersey; a replica of Highfields in Kentucky; the Provo project in Utah; and the Community Treatment Project set up by the California Youth Authority. It is said that "the work undertaken possesses an excellent *rationale* and preliminary results are both stimulating and encouraging." But a note of caution, which with the benefit of hindsight seems singularly appropriate, is added: "It cannot be said that the superiority of these treatment methods has been conclusively demonstrated."[18]

Seven years later in 1974 the Council of Europe published a further report entitled *New Trends in the Treatment of Young Offenders.*[19] *This* report too was based on a survey carried out, in the member states of the Council, under the auspices of the European Committee on Crime Problems. The object of the study was to make a critical survey of the methods of re-education employed in working with young offenders and "so far as possible, to draw valid conclusions which could serve, with special reference to innovations and experiments already undertaken, as a source of guidance to other member states in the treatment of offenders and the prevention of crime among young people."[20]

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[16] Ibid., pp. 22 and 23.

[17] Ibid., pp. 62-73.

[18] Ibid., p. 19.

[19] Council of Europe, European Committee on Crime Problems, *New Trends in the Treatment of Young Offenders,* Council of Europe, Strasbourg, 1974.

Unfortunately the guidance provided for other member states is somewhat obscure as the following excerpt from the concluding section of the report, headed "Toward the Future," indicates:

> At any one time the variety of provision and of approaches in the various European countries presents a patchwork which is difficult for the observer to encompass with any certainty. . . . There does, however, appear to be emerging some kind of consensus about the direction in which more successful treatment is to be found. In various ways the central trends cluster around the perception of the offender as a complex person operating in a complex society and the need for re-educational authorities to perceive more clearly what his needs are, and to react to them more perceptively and more positively.[21]

Once again American methods are commended and, in a report purportedly dealing with new trends in the treatment of young offenders in Europe, a remarkable amount of space is devoted to American examples both in the text of the report and in three appendixes. American techniques described include *behavior modification* (as practiced at the Karl Holton School in California), *transactional analysis* (as practiced at the O.H. Close School also in California--"We do not think there are any examples in Europe") and *guided group interaction* (as practiced at Highfields in New Jersey and also at Essexfields and Collegefields--"No example of guided group interaction could be found in European countries").[22]

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[20] Ibid., p. 7.
[21] Ibid., pp. 41-42.
[22] Ibid., 26-27 and pp. 51-70.

Other American models acclaimed are the California Community Treatment Project and the Provo Experiment, both of which are described as having "demonstrated the possibility of improving success rates and dealing more effectively with offenders of some difficulty, by using more intensive versions of the usual type of case-work supervision."[23] In addition readers are advised that more detailed reports on the Karl Holton and O.H. Close Schools and on the California Community Treatment Project can be obtained from the American Justice Institute and the California Department of Youth Authority respectively.[24]

The final paragraph of the report indicates, however, that the author was not under the delusion that a solution to the problems of juvenile delinquency had been found in America or anywhere else. It runs:

> All countries are concerned at the increasing numbers of young people for whom what might have been a temporary period of adolescent revolt, becomes a lifetime tragedy, often through addition to drugs. In some countries, but luckily not in all, patterns of serious violence are appearing which, with one eye on the USA, are bound to make us exceeding apprehensive of the future if no effective means can be found to prevent its further development. If the affluent society can produce new dangers for some of its young people, it can also afford to search more diligently for the remedies. It is to this task that we now must turn.[25]

The most recent comparable international survey is a five-volume series sponsored by the United Nations entitled *Justice and Troubled Children Around the World.*[26]

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[23] Ibid., p. 34 and pp. 71-76.

[24] Ibid., p. 47.

[25] Ibid., p. 42.

[26] V. Lorne Stewart (ed.), *Justice and Troubled Children Around the World,* New York University Press, New York, Volume 1, 1980; Volume 2, 1981; Volume 3, 1981; Volume 4, 1982; Volume 5, 1983.

In these volumes national experts provide diverse accounts of the approaches to juvenile justice and juvenile care in 32 countries.[27] On this series Malcolm Klein has commented accurately, "The descriptions offered . . . are very useful beginnings; but they are brief, [and] for the most part purely descriptive and lack the sort of intentional comparative structure that would lead readily to an advance in conceptualization of juvenile justice systems."[28]

A notable deficiency in the studies assembled in this series is the absence of information about evaluation studies, although there are occasional references to the need for research. The following excerpt from the report on the Dutch system provides an example:

> Although the Netherlands have a large network of widely differentiated institutions, there have been hardly any attempts to evaluate their treatment in a scientific manner. . . . Most of our institutions have no clear objectives or policy about treatment and no clear idea of who exactly to treat. It seems obvious that there is a pressing need for research in this field.[29]

In this respect, there has been no great advance in the two decades since the publication of the 1963 Council of Europe report referred to above.[30]

Even in Great Britain, where something more than lip service has been paid to the need for research, the situation is not a great deal more encouraging. In a description of the juvenile justice system in England and Wales published in 1984, David Farrington wrote:

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[27] Argentina, Australia (South), Brazil, Canada, Cayman Islands, the People's Republic of China, Costa Rica, Denmark, Egypt, England and Wales, France, the German Democratic Republic, the Federal Republic of Germany, India, Israel, Italy, Jamaica, Japan, Mexico, the Netherlands, Nigeria, Philippines, Poland, Saudi Arabia, Scotland, U.S.S.R., Spain, Sweden, Switzerland, Trinidad and Tobago, USA, and Yugoslavia.

[28] Klein, p. 7.

[29] Josine Junger-Tas, "Netherlands" in V. Lorne Stewart (ed.), Vol. I, 1980, pp. 111 and 120.

[30] Council of Europe, 1963, n. 8.

> I find the lack of well-controlled research on the English juvenile justice system almost unbelievable. It is tempting to think that the government, the Home Office, and the Department of Health and Social Security do not want an adequate evaluation of their juvenile justice system.[31]

Farrington states that he finds this extremely worrying, but even more worrying is the complacency of the government and some of its remarkable examples:

> The government justified its reduction of the minimum detention center sentence to three weeks by stating that "the deterrent effect of a sentence of this kind is likely to diminish after the first few weeks." I know of no adequate evidence in favor of (or against) this statement. The government also stated that it "is convinced that one of the most useful non-custodial penalties for young offenders is the attendance center order." The most recent Home Office evaluation of attendance centers was carried out by Dunlop (1980). About half of the boys she studied had 12-hour orders, taking about 12 weeks to complete, and half had 24-hour orders, taking about 24 weeks to complete. Of these boys, 29 percent were known to have offended while the order was in force (i.e., within an average period of 18 weeks). Furthermore, only 52 percent of the boys completed their orders (i.e., presented themselves on the average of 9 occasions) with no unauthorized absences. This research is extremely inadequate, since there was no attempt to compare boys given attendance center orders with similar boys given other dispositions and there was no adequate follow-up period. However, the results do not increase confidence in the effectiveness of the attendance center order, at least in relation to reoffending.

Farrington gives two further examples:

> In proposing to extend community service orders to those aged 16, the 1980 white paper stated that they have 'clearly provided the courts with a very effective alternative to custodial sentences.' The best existing evaluation of community service orders was carried out by Pease et al. (1977). They compared offenders given community service with those recommended for it but not given it. The reconviction rates within a one-year follow-up period were 44 percent for those given community service, 35 percent for those given

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[31] David R. Farrington, "England and Wales," in Klein, p. 90.

> custodial sentences, and 31 percent for those given noncustodial sentences. This research suffers from noncomparability of groups and from a follow-up period that is much too short, but it does not provide any grounds for confidence in the ability of community service orders to prevent future offending.
>
> As a final example, in recommending police cautioning, the 1980 white paper stated that "all the available evidence suggests that juvenile offenders who can be diverted from the criminal justice system at an early stage in their offending are less likely to reoffend than those who become involved in judicial proceedings." Farrington and Bennett (1981) indeed found that cautioned juveniles were less likely to be rearrested than those found guilty in court. Of course, those chosen for cautioning were a less delinquent group to start with. Farrington and Bennett also found that one of the most important determinants of whether a juvenile was cautioned or taken to court was the police officer's assessment of the juvenile's attitude. After allowing for differences in juvenile attitude, it emerged that cautioned juveniles were, if anything, more likely to be rearrested than convicted ones. Again, this research is inadequate because of the lack of random assignment, but it does not support the government's argument.[32]

Farrington's conclusion is not completely depressing because he adds that owing to the methodological inadequacies of much of the existing research," it would not be reasonable to conclude [as many others have done] that 'nothing works'"[33] But this assessment is far less optimistic than the hopes for treatment effectiveness that motivated special young offender policies. The social science data, when properly read, is as discouraging as contemporary data in the United States. The key issue is what effect this will have on the special status and treatment of young offenders, as discussed in the next section.

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[32] Ibid., pp. 91 and 92; The White paper referred to is Great Britain, Home Office, Welsh Office, Department of Health and Social Security, *Young Offenders* HMSO, London, Cmmd 8045, 1980) and the quotations given are from pp. 5, 2, 17 and 12 of that document in that order. The research studies referred to are: A.B. Dunlop, *Junior Attendance Centers* HMSO, London, 1980; K. Pease, S. Billingham, and I. Earnshaw, *Community Service Assessed in 1976,* HMSO, London, 1977; and D. P. Farrington and T. Bennett, "Police cautioning of juveniles in London," *British Journal of Criminology,* 21, 1981, pp 112-135.

[33] D. P. Farrington and T. Bennett, "Police cautioning of juveniles in London," *British Journal of Criminology,* 21, 1981.

II. ASPECTS OF CURRENT PRACTICE

AGE BOUNDARIES IN COURT PROCESSING AND CORRECTIONS

Table 4.1 reports the results of our survey of age boundaries in the European justice system. It was compiled from three recent analyses published in the United States. The table examines four age boundaries: the minimum age for responsibility for culpable acts, the upper limit for special juridical treatment because the subject is a child, the maximum age of special classification because the subject is a juvenile, and the general age of majority in reporting jurisdictions.

The minimum age that generates exposure to formal processing for wrongful acts varies from seven in Switzerland and ten in England to age 15 in the Danish system. The mode is age 14. Reporting jurisdictions with very young minimum ages of criminal responsibility typically provide separate treatment for younger children than for the older children formally classified as juveniles, a pattern noted in four of the ten reporting jurisdictions, including the two with the youngest minimum ages for some form of culpability. The subdivision within juvenile justice into child and juvenile categories is also found in Poland and Germany, two countries with somewhat late onset of formal responsibility.

The maximum age covered by the institutions of juvenile justice varies from age 16 (three countries) to age 20 (Germany) with the 17th, 18th, and 19th birthdays typically providing the formal boundary between juvenile and criminal court processing. In Sweden and Poland, this is supplemented with "young offender" special processing within the criminal court system for older adolescents.

In half the reporting jurisdictions, the transitional birthday between the juvenile court and criminal court processing is also the general age of majority for other purposes, and in four of these five coterminus age jurisdictions, the age of majority is 18. Only West Germany provides a general age of majority of 21 and sustains juvenile court treatment through that birthday.

Table 4.1

AGE BOUNDARIES IN EUROPEAN COUNTRIES

Country	Age of Criminal Responsibility	Child	Juvenile	Age of Majority
Denmark	15		15-17	18
England	10	10-13	14-16	17/18
France	13		13-18	18
Germany	14	14-17	18-20	21
Holland	12		16	18
Italy	14		14-18	18
Poland	13	13-17	16-17	18
Sweden	15		15-18	21
Switzerland	7	7-15	15-18	18-25
Yugoslavia	14		14-16	18

SOURCES:
V. Lorne Stewart (ed.), *Justice and Troubled Children Around the World*, Volumes I, II, III, V; New York University Press, New York and London, 1983.

Malcolm W. Klein (ed.), *Western Systems of Juvenile Justice*, Sage Publications, Beverly Hills, 1984.

V. Lorne Stewart (ed.), *The Changing Faces of Juvenile Justice*, Monographs of United Nations Crime Prevention and Criminal Justice Branch, New York University Press, New York, 1978.

In the other five jurisdictions, the boundary between juvenile and criminal court treatment is set at an earlier point than the general age of majority. In England, Holland, and Yugoslavia, the general age of majority is 18, but the transition from juvenile court occurs earlier. In Sweden and Switzerland, the gap is associated with later ages of general majority than the norm.

In formal terms, most patterns noted in Table 4.1 are more notable for the similarities in approach between the reporting nations than basic jurisprudential differences. And the patterns of difference noted are similar to the variations among reporting states in the United States with respect to age boundaries. Two interrelated trends provide the sharpest formal contrast between the European and American schemes: the tendency for some countries to extend the status of being juvenile to later points in chronological adolescence and the further subdivision into child and juvenile rubrics on an age-graded basis.

SPECIAL PROGRAMS FOR YOUTH OFFENDERS

Earlier the results of a survey of the contents of *Scandinavian Studies in Criminology* and *The British Journal of Criminology* were mentioned and it was noted that youth crime had received little attention. We turn now to the question to what extent such attention as was given dealt with programs relating to the prevention of serious youth crime and the treatment of such offenders.

The subject matters of the five articles dealing with youth crime in *Scandinavian Studies in Criminology* are self-reported delinquency among school children in Stockholm, the extent to which crime committed by youths up to the age of 16-17 in Norway is committed in groups, an experiment with new forms of assistance for young drug abusers in Copenhagen, the emergence of Norwegian Child Welfare law, and the inmate culture in Danish Borstals.

Of those articles, only two relate to prevention or treatment. The first, Karen Berntsen's "An Experiment with New Forms of Assistance for Young Drug Abusers in Copenhagen" presents a description of an experimental program of treatment on a voluntary basis carried out in Copenhagen during 1969 and 1970. The program was designed to "get the young people to relinquish drugs by finding a way of life which is more satisfactory to themselves and less of a burden upon society." It is explained that an "important factor" in the program was that "less emphasis [was] placed on the resocializing process, i.e. on getting the young people to function in terms of employment as quickly as possible, and bringing them in line with the majority of young and adult people in the existing society.[1]

There are passing references to involvement in criminal activity but the emphasis is on the abuse of euphoria-inducing drugs and narcotics. Some provisional results are given, but it is not at all clear how far the object of the program was achieved. There is no indication whether the results compare to those obtained by the conventional measures in use at that time--committal to an institution, imprisonment or voluntary hospitalization, and out-patient treatment.

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[1] Karen Berntsen, "An Experiment with New Forms of Assistance for Young Drug Abusers in Copenhagen," in *Scandinavian Studies in Criminology, Vol. 3,* Scandinavian University Books, Oslo, 1971, p. 52.

Flemming Balvig's "Is the Inmate Culture a Delinquent Culture?" deals with an investigation carried out in three Danish Borstal institutions, which are also referred to as "youth prisons," in 1968. The investigation was designed to explore the cultural tendencies in these institutions. The answer given to the question posed in the title is that "the dominant picture for the inmates in Danish Borstals in 1968 was the existence of two separate cultures, a delinquent and a not-delinquent, with a No Man's Land in between. . . . The majority of the inmates are, in all the Borstals, placed in the not-delinquent culture, the minority in the No Man's Land and the delinquent culture."

To those interested in the effectiveness of Danish Borstals Balvig's attitude may seem somewhat cavalier. He says "I do not have any data about recidivism and its possible correlations with the cultural tendencies I have found." Moreover, he adds, "I have in fact been very little interested in this kind of data, which have, in my opinion, been given all too much attention."[2] Unfortunately he does not indicate where the results of this excessive attention may be found.

Only one of the original papers in the ten volumes of *The British Journal of Criminology* surveyed deals specifically and directly with the nature or effectiveness of preventive or treatment measures for dealing with serious juvenile crime and criminals. That is not to say that there are no papers relevant to the operation of such measures. But the implications for practical purposes of papers on such topics as "A Survey of Y Chromosome Variants and Personality in 436 Borstal Lads and 254 Controls"[3] or "Do Young Prisoners Under-state their Extroversion on Personality Inventories?"[4] are by no means clear, nor are they mentioned in the papers.

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[2] Flemming Balvig, "Is the Inmate Culture a Delinquent Culture?" in *Scandinavian Studies in Criminology, Vol. 5,* Martin Robertson, London, 1974, pp. 124 and 125.

[3] Margaret Bates, J. Kahn, Freda Reed, T. Coates, and B. Everitt, "A Survey of Y Chromosome Variants and Personality in 436 Borstal Lads and 254 Controls," *The British Journal of Criminology,* Vol. 16, 1976, p. 233.

[4] Stephen Booth, Peter McCue, and Jacqueline Root, "Do Young

Of more direct relevance are two articles by J. Kraus. The first of these, "A Comparison of Corrective Effects of Probation and Detention on Male Juvenile Offenders,"[5] uses the divergencies in the sentencing practices of courts as an *ex post facto* experiment by following up groups of comparable offenders. 233 male juvenile offenders given probation in New South Wales, Australia, were matched with 233 offenders committed to an institution on seven demographic variables associated with recidivism following the application of corrective measures. Kraus found that recidivism was higher after detention than probation in five offense categories (steal; break, enter and steal; assault or malicious damage; sex offenses--excluding carnal knowledge or statutory rape--and carnal knowledge), and lower in one category (take and use motor vehicle).

The second article by Kraus, "Remand in Custody as a Deterrent in Juvenile Jurisdiction,"[6] deals with a study designed to test the assumption that remand in custody deters recidivism. A two year followup of 90 male juvenile first offenders remanded in custody and of 90 matched offenders remanded at home (both groups having been given probation) showed that considerably more juveniles offended again after remand in custody.

Other papers in these volumes dealing with the control of juvenile crime relate to Nigeria, Japan, and the Soviet Union. Olufunmilayo Oloruntimehin's article, "A Study of Juvenile Delinquency in a Nigerian City," stated

> From this study it is clear that juvenile delinquents in Lagos and in fact in Nigeria generally cannot yet be regarded as a serious menace to society as they are in countries like the United States of America and Britain. The range of crimes committed by juveniles is limited and not very serious (many of them could pass for misdemeanors in other countries).[7]

Prisoners Under-state their Extroversion on Personality Inventories," *The British Journal of Criminology,* Vol. 16, 1976, p. 282.

[5] J. Kraus, "A Comparison of Corrective Effects of Probation and Detention on Male Juvenile Offenders," *The British Journal of Criminology,* Vol. 14, 1974, p. 49.

[6] J. Kraus, "Remand in Custody as a Deterrent in Juvenile Offenders," *The British Journal of Criminology,* Vol. 18, 1978, p. 285.

[7] Olufunmilayo Oloruntimehin, "A Study of Juvenile Delinquency in a

Masaharu Yanagimoto's article on "The Juvenile Delinquent in Japan" also provides a contrast with America and Britain, as it reports declining populations in both juvenile training schools and juvenile prisons: from 9,630 in 1966 to 5,398 in 1969 in the former; and from 6,353 in 1948 to 1,234 in 1969 in the latter. Yanagimoto's explanation of the decline is that it is due to a change in the "policy of the family courts, and a change in the nature of crime and delinquent acts committed by the juveniles, which are less atrocious. It is speculated that both factors are involved."[8] He refrains from speculating about why delinquent acts in Japan should have become less atrocious over the periods indicated.

James Hinners' article on "Soviet Correctional Measures for Juvenile Delinquency" is the only paper is these volumes to both describe a treatment regime for serious juvenile offenders and give some information about results.[9] It indicates that official measures aimed at juvenile delinquents in Soviet society can be grouped into two broad categories. On the one hand there are educational measures applied to all 14-16 year olds and those 17 and 18 year olds who are guilty of minor offenses (hooliganism, petty theft, and vandalism). On the other hand there are measures of punishment for youths 16 to 18 years old who commit more serious crimes (larceny, bodily injury, murder etc.).

Those in the former category are dealt with by juvenile commissions, which use four types of measures: (1) notices condemning improper behavior, (2) obligations to repay damages, (3) registration in a special school, and (4) removal from the home and placement in an institution (which is said to be "rarely applied"). Hinners reports, "The available evidence suggests that children's institutions are experiencing difficulties in instilling official values into difficult

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Nigerian City," *The British Journal of Criminology,* Vol. 13, 1973, p. 168.

[8] Masaharu Yanagimoto, "The Juvenile Delinquent in Japan," *The British Journal of Criminology,* Vol. 13, 1973, p. 174; the decline continued and by 1979 the population of juvenile training schools had fallen to 3195 and in juvenile prisons to 80. See Yoshio Suzuki, "Japan," in Stewart, 1980, pp. 93 and 99.

[9] James E. Hinners, "Soviet Correctional Measures for Juvenile Delinquency," *The British Journal of Criminology,* Vol. 13, 1973, p. 218.

youngsters," and "Specialists continue to complain that children's institutions are ineffective."[18]

Those in the latter category--the more serious offenders from 17 to 18--are sentenced by the people's courts, which deal with adult offenders. According to Hinners, "The more serious the crime, the more likely it is that the perpetrator will be sentenced to deprivation of freedom"--a sentencing principle not altogether unknown outside the USSR. The sentences are carried out in labor colonies for minors of which there are two kinds: (1) Standard regime labor colonies (for first offenders, except those convicted of "the most dangerous types of crimes"), and (2) Strict regime labor colonies (for recidivists who have already served a sentence and for those convicted of "the most dangerous types of crimes." Hinners does not give any details of the strict regime but the standard regime is described as follows:

> The correctional activities of the colonies consist of labour, general education, technical vocational training and, for the inmates of standard regime colonies, political indoctrination. Mandatory labour and technical-vocational training often coincide. Adolescents in standard regimes, for example, are sometimes specially employed in local factories and plants located near their colony. These enterprises also send foremen and production managers to teach vocational courses in the colony during evenings. Jurists have argued that while reciprocal programmes of this kind are crucial to the successful rehabilitation of many youngers, they can often have adverse effects. Such foremen-turned-instructors have been known, on more than a few occasions, to promote forms of anti-social behaviour among convicted minors, such as drinking.
>
> The socializing activities of the colony are conducted through a structure that encompasses the entire juvenile population. The colony is divided into divisions of 25-30 inmates. Each division is comprised of adolescents with similar levels of academic achievement who are undergoing the same kind of vocational training. Those members of each division with the best academic and personal conduct records comprise the group's representative organ, the soviet of students. These bodies are in charge of additional socializing measures to which all imprisoned adolescents are exposed. Members of each division soviet head "social commissions" in which the other inmates of the division are required to participate. Commissions in charge of academic and professional education,

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[18] Ibid., 219.

> production competition, propaganda and sports take part in organizing the day-to-day life of the colony. In this way, every inmate is under the supervision of adolescents whose conduct best reflects official values. All are compelled to participate in socializing activities.
>
> The most overt socializing function which the soviets perform is connected with discipline. In order to instill a "healthy" attitude towards labour and a respect for the laws of the collective, soviets scrutinize daily the labour productivity and conduct of every member of the colony. Youths who fulfill or over-fulfill their production quotas and who consistently respect the official norms of discipline are eligible to receive special citations and transfers to more comfortable living quarters. Soviets can also bestow rights to have more visits, more money to spend on trips outside the colony, and the right to receive additional parcels. Youths who fail to meet production quotas or who violate rules of discipline may have these privileges reduced or revoked. For improper conduct they can also receive assignment to extra work details or solitary confinement (for a period of up to five days). The most serious disciplinary cases in standard regime colonies are transferred to colonies with severe regimes.
>
> In this way the educational measures of the standard regime labour colony aim at re-socializing adolescents. As with other official socializing measures for youths, the activities of the labour colonies operate on the principle that selected values will be internalised by youths who consistently pattern their behaviour after prescribed norms.[11]

Apparently the application of this principle does not always result in effectively re-socialized young people. Nearly half of all imprisoned youths are granted early release (determined by the gravity of the offense and conformity to official norms while at the colony) and "80 percent of all young persons released prematurely commit new crimes." One is the "severely limited exposure to the re-educative processes of the colony," for although the most common sentence for youthful offenders is two to three years, "the actual mean term of confinement for all imprisoned juveniles is no more than nine to twelve months." It would be interesting to know whether there is any evidence that longer exposure to the re-educative processes of labor colonies produces better results, but if there is Hinners does not mention it.[12]

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[11] Ibid., pp. 220-221.

[12] Ibid., p. 222; The figures cited by Hinners are taken from

Apart from the periodical literature there are some collections of essays that deal with juvenile delinquency and juvenile justice in selected countries. In addition to the five volumes of V. Lorne Stewart's, *Justice and Troubled Children Around the World*,[13] there is another volume of essays, also edited by V. Lorne Stewart, published under the aegis of the United Nations Crime Prevention and Criminal Justice Branch, consisting of papers delivered at a 1975 UN seminar in Geneva on "Juvenile Justice in Profile."[14] There is also a volume of papers, delivered at the American Society of Criminology's annual meeting in Toronto in 1975, which deals with *Youth Crime and Juvenile Justice* in Europe, the Middle East and North and South America.[15] Finally there is Malcolm Klein's *Western Systems of Juvenile Justice*, which contains descriptions of eight Western juvenile justice systems.[16]

Anyone seeking what Sheldon Glueck, in a curious metaphor, calls "a golden key to the baffling walls still surrounding the problem of delinquency" will certainly not find it in any of these volumes. What Glueck had in mind was the discovery of "the *universals* operative as causal agents in juvenile delinquency"[17] (author's emphasis). But even those with the more modest hope of discovering some reasonably effective methods of prevention, control, or treatment will be equally disappointed. As Friday and Lorne Stewart say, in their essay on "International Perspectives on Juvenile Justice and Youth Crime," in regard to "juvenile justice and youth crime in industrialized affluent societies . . . there is amazing consensus regarding the lack of effectiveness of current systems."[18] There seems also to be a universal lack of ideas as to how to render those systems effective. It is almost as though the whole adult world feels, in the words of Shakespeare's Shepherd in *The Winter's Tale*:

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several studies done in various selected regions and cities in the USSR. Statistical data on juvenile crime on an All-Union level are "virtually non-existent in Soviet publications" (p. 218).

[13] Stewart, 1980.

[14] V. Lorne Stewart, *The Changing Faces of Juvenile Justice*, New York University Press, New York, 1978.

[15] Paul Friday and V. Lorne Stewart, *Youth Crime and Juvenile Justice: International Perspectives*, Praeger, New York, 1977.

[16] Klein.

[17] Sheldon Glueck, "Foreword" to Stewart, 1980, p. vii.

[18] Friday and Stewart, pp. 1 and 5.

> I would there were no age between ten and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancientry, stealing, fighting.[19]

A passage in Alenka Selih's account of the Yugoslavian juvenile justice system, dealing with institutions for juveniles, is relevant here. Selih points out,

> that the conditions of work of all of these institutions are poor. Very often their housing facilities are inadequate, staff shortages are great, and turnover is frequent. It has been recognized also that the work of the staff is more difficult and often not gratifying. In spite of this, the staff does not enjoy enough social reward to compensate for these difficulties.

Then she goes on to say that

> the conceptual bases of the institutional reeducation have never been clearly and firmly defined and that this represents one of the major deficiencies and obstacles in organizing the institutions better and securing greater success with the juveniles in their reeducation.[20]

In the first half of the 20th century the material deficiencies, which Selih notes, were not less--and in many cases were considerably greater--than they are now. The barrenness of policy and practice in our time surely reflects the dissolution of the confident "conceptual bases" that provided the rationale for those earlier authoritarian and paternalistic patterns. That is the crucial difference.

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[19] William Shakespeare, *The Winter's Tale*,, Act III, Scene III, p. 77.

[20] Alenka Selih, "Yugoslavia" in Stewart, 1981, p. 184.

III. THE SEARCH FOR NEW SOLUTIONS

A LOOKING TO AMERICA

We noted earlier the tendency for other countries to look to America for models to emulate in dealing with juvenile offenders. When did this trend begin and why? It was certainly not the case at the beginning of the 20th century.

Ruggles-Brise's report of the discussion of "The State Reformatory System of the United States" at the 1900 Congress of the International Penal and Penitentiary Commission in Brussels illustrates the prevailing European attitude at that time:

> The discussion was characterized by a hardly veiled hostility to what is known generally in Europe as the "Elmira System"; for, though the other States have, in varying degrees, adopted the reformatory system, Elmira remains the type, and pattern, and embodiment of the special and novel institution which the Americans claim to have originated, and which they invite other nations to adopt as an essential feature of any good penal system. . . . The rather bulky pamphlets . . . failed to convince the European reader. A certain irritation was apparent throughout the discussion, that the American delegates should force upon the attention of Europe, which had been devoting itself to the study of penal science for last hundred years, a new form of institution for dealing with crime, which, if the claim made on its behalf can be justified by results, has at any rate not yet been long enough in existence to furnish a certain proof that a new discovery has been made, or that measures were working successfully in America, which European countries were either content to ignore, or too idle to apply. In short the Congress declined to give a vote of confidence to a system which, though abounding in specious theories and promises of reform, was not hitherto fortified by statistical data, which alone can justify prudent men, engaged in the repression of crime, from embarking upon new designs. . . . Even discounting a certain reluctance to confess that the Americans had discovered any new thing in penology, not unnatural among the representatives of the older races. . . . [they] were prevented, by considerations of prudence, from hastily adopting a new idea, unless they could be satisfied, as practical men, that there was something in the idea which would justify the time, trouble and expense which any departure from the recognized methods would involve.[1]

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[1] Evelyn Ruggles-Brise, *Prison Reform at Home and Abroad*, Macmillan, London, 1924, pp. 95-99.

What "the study of penal science for the last hundred years" was thought to have produced is not clear, but it is clear that at that time America was seen as a parvenu among the nations suffering from *folie de grandeur*. Nevertheless, three decades later Alexander Paterson, who succeeded Ruggles-Brise as head of the Borstal system, found much to praise in America, and said so in his privately circulated *The Prison Problem of America (with admiration for those who face it)*.[3] Moreover, as Benedict Alper noted, when Paterson was visiting the United States in 1931, "he was most impressed by the use of forestry camps for young prisoners. Upon his return to England, he was instrumental in the creation of four open Borstal institutions which have paved the way to a broadening of his unique method of training youth offenders."[2]

After World War II, with America firmly established as one of the world's two greatest powers, it was no longer possible for other nations to view it condescendingly as an egregious upstart. In the field of penology James V. Bennett was recognized internationally and was cited by Lionel Fox as representative of the new spirit "which characterized the resolutions of the Twelfth International Penal and Penitentiary Congress at the Hague" in 1950.[4]

Many European countries experienced a substantial postwar rise in juvenile delinquency. In some of them this was followed by some decline in the early 1950s. But 9 out of the 12 countries belonging to the Council of Europe (Austria, France, the Federal Republic of Germany, Greece, Italy, Norway, Sweden, Turkey, and the United Kingdom) there was an increase in the 1950s. This increase was not confined to property offenses. In Great Britain the number of those found guilty of violence in the age-group 17-21 increased by a factor of seven between 1946 and 1958. Austria, Germany, Denmark, and France also reflected substantial increases in crimes against the person.[5]

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[2] Benedict S. Alper, "The Borstal System of Training for Youthful Offenders," in Paul W. Tappan (ed.), *Contemporary Correction*, McGraw-Hill, New York, 1951, pp. 328-329.

[3] Alexander Paterson, *The Prison Problem of America*, H.M. Prison, Maidstone, Kent, 1932, private circulation.

[4] Fox, pp. 64, 140, and 448-9.

[5] Council of Europe, European Committee on Crime Problems, *Juvenile Delinquency in Post-War Europe*, Council of Europe, Strasbourg, 1960, pp. 24-25 and 27-28.

Table 4.2

THE BRITISH JOURNAL OF CRIMINOLOGY, 1964-1983,
ORIGINAL PAPERS SUBJECT ANALYSIS
(Percentages rounded)

Subject Matter	1964-1973 # of Papers	%	1974-1983 # of Papers	%
Juvenile Crime	100	53	65	27
Other Topics	87	47	173	73
Total All Subjects	187	100	238	100

SOURCE: *British Journal of Criminology*, Vols. 3 to 23 (1964-1983.)

It is not altogether surprising that at that period when so many European countries looked to America for economic aid and assistance American advice should have been sought, and American examples followed, in dealing with social problems. California in particular attracted attention and the research studies and monographs published by the California Department of Corrections and the California Youth Authority were widely read in European countries by those seeking new methods of treatment for offenders. American sociological and psychological theory was seen as providing a conceptual basis for a new and different approach to the organization of penal institutions. Group counseling as described in the writings of Dr. Norman Fenton[6] was eagerly adopted or adapted for use in English[7] and Scandinavian penal institutions. By the 1960s, America (in particular California) was widely regarded as a beacon pointing the way to the future in both juvenile and adult corrections. By the 1980s, however, the beacon had dimmed.

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[6] Norman Fenton, *What Will Be Your Life? For Use in the Counseling Classes of the Institutions of the Department of Corrections of the State of California,"* California Department of Corrections, Sacramento, CA., 1955; also *Group Counseling, A Preface to its Use in Correctional and Welfare Agencies,"* California Department of Corrections, Sacramento, CA., 1961.

[7] Hood, pp. 142-147; see also R. L. Morrison, "Group Counselling in Penal Institutions," *Howard Journal*, Vol. 10, 1961, p. 279; and A. W. Peterson, "Modern Developments in the Prison System," *Howard Journal*, Vol. 10, 1960, p. 167.

We noted earlier the disproportionally small degree of attention to juvenile crime and criminals in *The British Journal of Criminology* over the decade 1974-1983. This does not represent a consistent pattern over all the years of publication of that journal but reflects a marked change in emphasis. Table 4.2 illustrates the contrast between the decades 1964-1973 and 1974-1983 in relation to the proportion of original papers dealing with juvenile crime.

Before 1971, as Martin Wright has pointed out in a retrospective subject analysis covering the first 20 years of *The British Journal of Delinquency/Criminology* (1950-1970), the predominant emphasis was on juvenile crime. "The most common concerns beyond any doubt," he says, "were juvenile delinquents and delinquency, and institutions for juveniles."[8] The results of his analysis, which was based on the main subjects of articles, items in the current survey of research and methodology, and notes, are shown in Table 4.3.

But this phenomenon is not confined to *The British Journal of Criminology.* A survey covering the first 20 years of publication of the American *Journal of Research in Crime and Delinquency* from 1964 to 1983 reveals a parallel decline in attention to the problems of juvenile crime which is quite striking, as shown in Table 4.4.

In 1968 Carter and Wilkins did a "concern" analysis of the professional correctional journal *Federal Probation* for the 20 years from 1947 through 1966.[9] They used as an index of changing levels of concern the percentage of the total number of articles in a particular classification published in the two decades 1947-1956 and 1957-1966. When this technique is applied to the data in Tables 4.2 and 4.4 the decline in the level of concern about juvenile crime is shown clearly in Table 4.5.

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[8] Martin Wright, "Twenty Years of the British Journal of Delinquency/Criminology," *British Journal of Criminology,* Vol. 10, 1970, pp. 379-380.

[9] Robert M. Carter and Leslie T. Wilkins, "Changing Concerns in Corrections," *Issues in Criminology,* Vol 3, No. 2 1968 pp. 197-209.

Table 4.3

BRITISH JOURNAL OF DELINQUENCY/CRIMINOLOGY 1950-1970
SUBJECT CATEGORIES IN ORDER OF FREQUENCY OF OCCURRENCE

Juvenile delinquents, delinquency	110
Institutions for juveniles	71
Criminology	61
Prisons, imprisonment	45
Offenders, recidivists	39
Psychiatry, therapy	37
Classification, predicttion, typologies	36
Probation and aftercare	31
Juvenile, family courts	30
Social work	28
Psychoneuroses, behavior disorders, etc.	28
Law, legislation, etc.	24
Psychology	24
Social Sciences, social factors	23
Penology, penal systems	22
Sexual offenders/offenses	21
Delinquent areas, ecology	21
Causation	19
Capital punishment	16
Offenders/offenses against the person	16
Police	15
Psychopathy	15
Miscellaneous	15
Prisoners' characteristics	14
Offenders/offenses against property	14
Mental deficiency and other syndromes	14
Families, parental separation, etc.	14
Sentencing	13
Attitudes, public opinion	13
Offenders: women and girls	12
Abuse of alcohol and drugs	12
Administration of justice, procedure	12
Social enquiries etc.	12
Mental illness, mental patients	12
Children	12
Psychosexual disorders	11
Crime	9
Prevention	9
Criminal responsibility	9
Education, employment, etc.	9
Deviance, anomie	8
Parole	6
Genetics, neurology, etc.	5

SOURCE: Martin Wright, "Twenty Years of the British Journal of Delinquency/Criminology," *British Journal of Criminology*, Vol. 10, 1970, Table III, p. 379.

Table 4.4

THE JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY 1964-1983
ARTICLES SUBJECT ANALYSIS
(Percentages rounded)

	1964-1973		1974-1983	
Subject Matter	# of Papers	%	# of Papers	%
Juvenile Crime	63	43	46	28
Other Topics	83	57	116	72
Total All Subjects	146	100	162	100

SOURCE: *The Journal of Research in Crime and Delinquency*, Vols. 1-20, 1964-1983.

But the emphasis given to, or the degree of attention devoted to, a subject in criminological journals cannot be accepted simply as an index of the concern felt about that subject. The subjects to which a discipline gives most attention are not always those felt to be of the greatest importance. In this case it seems much more probable that the decreasing attention given to juvenile delinquency and the lack of attention to the serious juvenile offender, both here and throughout the world, reflects less a lack of concern than an increasing feeling of futility and frustration, which is not at all diminished by being linked with an urgent sense of necessity.

CONCLUDING REFLECTIONS

The decline of confidence in rehabilitation programs is international in scope, but the consequences of discouraging data and shifts away from special interest in youth programs are less drastic in England and Europe than in the United States. No powerful movement away from special treatment for young offenders has accompanied the decline of the rehabilitative ideal in Western Europe. The pressure to rethink the premises of juvenile justice that Americans associate with the absence of differential treatment effects is not yet reflected in the scholarly literature we have surveyed and may never be.

Many contemporary observers of juvenile justice assume that the legitimacy of special treatment of the young is tied to documented program effectiveness. This survey of other countries provides some basis to question the strength of this association. Our conclusions are tentative on this matter. But further study of the links between youth crime, treatment effects and the perceived legitimacy of special treatment regimes seems warranted.

Table 4.5

PERCENTAGES OF TOTAL ARTICLES ON JUVENILE CRIME
DURING 1964-1983
(Percentages rounded)

Journal	1964-1973	1974-1983
British Journal of Criminology	61	39
Journal of Research in Crime and Delinquency	58	42

SOURCE: *British Journal of Criminology*, Vols. 3 to 23 (1964 - 1983) and *Journal of Research in Crime and Delinquency,* Vols. 1 to 20, 1964-1983.

CHAPTER V

CHANGING LEGAL PARADIGMS IN JUVENILE JUSTICE

by

Marc Miller*

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*J.D. University of Chicago Law School, 1984. Law Clerk, Chief Judge John C. Godbold, Eleventh Circuit Court of Appeals (1984-85). Special thanks for guidance and assistance belong to Peter Greenwood and Franklin Zimring. I would also like to thank Jon Fieldman, Steve Gilles, and Larry Kramer for their help with this paper.

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I. INTRODUCTION

This paper explores the legal side of the 20-year-old juvenile justice revolution. It tries to answer seemingly simple questions: What are the present legal limits on state power over delinquents? How have those legal limits affected the juvenile justice system in practice? and Where are the legal controls heading?

The basic changes in the legal world of juveniles for the last two decades are common knowledge to a generation of lawyers. Dissatisfaction in the 1950s with the 50-year-old special juvenile law system led to judicial and scholarly revolution in the 1960s, and on to legislative change in the 1970s. The sharp dissonance between the rhetoric of juvenile law and the reality of juvenile process provided fertile grounds for revolt.

The revolt blossomed, oddly, in the Supreme Court. In *Kent v. United States* and *In re Gault,* the Court questioned the validity of a legal world for minors constructed without reference to the legal world for adults. In *Gault*, the Court offered a partially reconstructed legal world in which minors are not denied fundamental procedural protections extended to adults in similar situations. Yet minors were not to be treated the same as adults: Their special legal status remained.

No consistent rationale explaining the special state interest in the lives of juveniles has emerged in the key Supreme Court cases. Perhaps this indicates that a consistent rationale for the entire juvenile justice system, or even for all juveniles appearing before juvenile court, is not a proper or achievable goal. Yet, if this is the case, the courts have not been careful in limiting the scope of the principles that have been offered or implied.

Parens patriae has served as the overarching justification for treating minors and adults differently. Within the language of *parens patriae* runs a deeper battle between punitive and rehabilitative views of the proper response to deviate juvenile development and behavior. These themes of punishment and rehabilitation are woven throughout the entire area, although this paper suggests that the battle has quieted and the two themes have moved onto their own turf--punishment as the guiding rationale of the juvenile courts and for the dispositions given chronic and severe offenders, rehabilitation as the guiding rationale for minor delinquents and status offenders.

Historians and legal scholars have decisively attacked *parens patriae* as a historical concept,[1] but as a matter of practice as well as common sense, minors continue to receive special judicial consideration. The question is not really whether special considerations exist, but just what considerations are valid and how they should effect the juvenile justice system.

Parens patriae acts as both a descriptive element--of other powers such as the power to punish--and as an independent force, itself describing some unique aspect of the relationship between state and minor. This unique aspect justifies different treatment of minors, whether more or less severe than that given adults. This special interest may also justify the exercise of powers over minors that could not constitutionally be exercised over adults.

The language of *parens patriae* is deeply embedded in the juvenile law. There is no need to excise the words from the law, empty as they may be of historical content, but the modern content of the term must come not from history but from the balance between a concern for individual liberty and a corresponding recognition of the state's general interest in crime control and specific interest and obligation toward individual minors. The existence of some *parens patriae* rationale, defined as a recognition that minors should be treated differently, is at the most basic level a matter of consensus and common sense.

This paper explores the balance between minor and state developed by the Court. It suggests that practical limitations on the broader conception of juvenile delinquency and predelinquency have been created by the changing role of traditional juvenile justice institutions.

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[1] See e.g. Schlossman (1977; 1983); Morris (1970); Rendleman (1971). In *Gault* the Court observed that the intentions of the turn of the century reformers were good, but questioned the lineage of the doctrine of *parens patriae*. Justice Fortas pointed out that the idea was used to avoid "constitutional grief." The Court concluded that the "meaning [*of parens patriae*] is murky and its historic credentials are of dubious relevance."

The first juvenile justice revolution, at the turn of the century, created a truly new, even radical program for dealing with criminal and problem behavior by minors. Gone was a system that integrated juveniles into the adult criminal law system; in its place arose a set of institutions--the juvenile court, modern schools for delinquents, and the probation system--for dealing particularly with minors. The fundamental characteristic of this juvenile system was its unitary nature under the "omnibus" theory, where all problem behavior, minor or severe, bothersome or criminal, was routed through the same institutions and handled under the same principles.

The modern juvenile justice revolution originated in the courts. Not surprisingly, the institution of the juvenile court has felt the brunt of the attack. Although the Supreme Court jurisprudence in this area is hard to summarize, the cases support the view that: (1) children are different from adults; (2) children have liberty interests similar enough to adults that fundamental fairness requires many of the basic procedural protections in delinquency adjudication that are accorded criminal defendants and; (3) punishment is an appropriate part of the juvenile court's task. Although the precise source of the state's special power over juveniles is particularly hazy, it does not seem to come from the power to punish but from some other source.

The strongest single observation about the results of the new revolution is that the juvenile justice system is no longer unitary, and the "omnibus" theory has evaporated. In its place are diverging theories and processes pulled toward two distinct paradigms, one for criminal minors and severe or chronic delinquents, the other for minor offenders and problem nonoffenders.

The diverging paradigms have left different questions and problems at each end of the juvenile justice spectrum. At the high end the juvenile courts have been proceduralized and restricted to a point where they largely mirror the operation of the criminal court in operation and clientele. Many offenders are waived into adult court and treated as adults, while others are left within a juvenile court that has adopted both the character and the underlying punitive rationale of the adult criminal courts.

At the other end of the behavioral spectrum, the original turn-of-the-century reformer's ideal of dealing with all problem minors has given way to social service institutions that are largely crisis oriented and responsive to individual problems only after they have developed. The vitality of a rehabilitative rationale is shown clearly by the recent changes in dispositions for status offenders. In recent years there has been a substantial decrease in secure confinement for status offenders and a similar drop in the total number of status offenders.

The response to delinquent and problem acts has thus diverged, and the idea of a set of uniform juvenile justice principles has been lost in the process. The two new paradigms are moving apart on their own steam, the punishment of severe offenders fueled by the media and pervasive fear of crime, the treatment of status offenders fueled by modern, sophisticated social reformers. In the process, the treatment and guiding principles for the two groups of delinquents are moving apart faster than they would be if the change was occurring only at one end of the spectrum.

Left out in the new calculus, and to a large extent left out of the old, are institutions and guiding principles for dealing with predelinquents, minor first time delinquents, and status offenders who are not experiencing a crisis. Current status offender institutions do not have the institutional capacity to seek out groups for which primary intervention would be appropriate, or to implement primary intervention programs. In the face of new theories, discussed in other papers in this work and presented in general form in the companion volume *One More Chance,* this weakness raises an important question as to what social institutions would be appropriate for such programs and what legal restraints might be placed on such programs.[2]

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[2] A separate paper in this series considers the public schools as the primary and perhaps sole avenue for the application of primary delinquency programs. Such programs may be appropriate (*see One More Chance*, 1985), for status offenders, minor offenders, troubled nonoffenders, and probabilistic delinquents--those minors identified as being members of a group having a higher likelihood of future delinquency and criminality than a group of minors in a similar situation.

This paper sketches the original ideal of separate juvenile justice principles and institutions. It then considers with some care the modern judicial response to the unsatisfactory institution of the juvenile court with the intent of creating an image of the current legal principles that guide the relationship between delinquent and state. It mentions a few of the legislative trends that occurred in response to the judicial revolution and that have taken over the prime source of juvenile law change.

Having set the legal picture, the paper briefly touches on some of the reasons for a continuing distinction between adults and children and concludes with a discussion of the basic changes in dealing with status offenders that have occurred as a counterpoint to the changes in dealing with delinquents.

II. THE TRADITIONAL THEORY AND THE FORGOTTEN YEARS

At common law, "juvenile offenders were treated indistinguishably from adult offender" (Walkover, 1984, p. 505). Modern juvenile law emerged at the turn of the century under the guiding hand of progressives who believed that minors who committed criminal acts or who had behavior problems should not be dealt with in criminal court or under a punitive philosophy. The "omnibus" theory offered by the reformers and first fully instituted in Cook County, Illinois, was rapidly adopted across the country. It generated distinct processes, institutions, and programs for juveniles. The state role became more parental than prosecutorial, helping the wayward child who deviated from innocence. The language used to describe this new relationship between state and child was *parens patriae*--the state acting as the parent. The reformers believed in a "vision of the law as a prime mover in the cause of planned human betterment" (Schlossman, 1983, p. 962). The term *delinquent* described minors who committed illegal acts, and it initially conveyed concern, not reproach (see, e.g., Platt, 1969; Garlock, 1979; Schlossman, 1977).

The special juvenile court was the reformers' central institutional innovation. Though often operated with preestablished facilities and judges, the express purposes of the law, the form of the hearings, and the possible dispositions were dramatically changed when a court sat as a juvenile court. Proceedings were informal and the delinquent unrepresented. Under the omnibus theory the court maintained broad discretionary powers of disposition over children with a wide range of problems and behavior.

> Because the juvenile court would exercise state power only benignly, the judge was given discretion to sentence any delinquent to anything from probation through institutional confinement--until his or her majority. And because the label of delinquency was to carry no stigma, almost any troubled youth could be found delinquent (Zimring, 1978a, p. 631).

In theory, the courts did not have trials, but hearings; they did not sentence, but disposed of each matter; they did not seek punishment, but rehabilitation. Special institutions, including the system of probation, were developed to deal with the problem juveniles.

The juvenile court was a radical development at the time of its creation--a truly progressive revolution. The new juvenile law had a weak theoretical base in the principle of *parens patriae*, but then, as now, the changes in the law were really social and not in any real sense "legal:" It was policy, not theory or history or jurisprudence, that drove the juvenile justice revolution. The same point could be made about the modern revolution in the form of "get tough" legislative reforms.

From the turn of the century until the 1960s--forgotten years from the perspective of modern legal and political reformers--there was little change in the juvenile law. "No state limited the definition of delinquency to criminal acts as of 1950, and undifferentiated treatment of juvenile and noncriminal misbehavior was the continuing rule" (Teitlebaum, 1983, p. 983). There may have been changes in rehabilitation programs and institutions as new perspectives on juvenile development and behavior developed, but the legal experiment was allowed to run virtually unimpeded for its first 50 years.

In the early 20th century, juvenile courts across the country were upheld in the face of constitutional challenge (see, e.g., Ex parte Crouse, 4 Whart. 9 (Pa. 1839); Paulsen, 1966). The degree to which the juvenile court was accepted throughout the first half of this century is, in retrospect, hard to believe. The endurance of a positive view of the juvenile court is evident in the statement of Dean Roscoe Pound in 1950 describing the juvenile courts as "the greatest step forward in Anglo-American jurisprudence since the Magna Charta." Of course, Pound had also observed, almost 40 years earlier, that "the powers of the court of star chamber were a bagatelle compared with those of American juvenile courts" (Empey, 1979a).

III. THE MODERN RESPONSE

The modern juvenile law revolution began in the courts and centered almost solely on the institution of the juvenile court. The delayed legislative response to the changing view of the relationship between state and problem child largely reflected the previous judicial stance with a focus on severe delinquency and a reliance on the model of the adult criminal court and often, through waiver, the actual institution.

The Supreme Court has led the revolution and defined its aims and advance in terms of a world of due process rather than a world of rational policies or institutions. The Court chose the analogies on which the arguments for change were based. Left out of the new model of juvenile law was the traditional conception of the state as a benevolent and caring parent. Its replacement is a more shadowy if more realistic figure, a state acting as enforcer and parent, the latter as much by need and circumstance as by choice.

The state, as a matter of necessity, must continue to operate differently toward minors than toward adults if it is not to violate a fundamental sense of societal ethics. This section explores in some detail the Court's view of the special relationship between state and delinquent.

THE JUDICIAL FRAMEWORK

The progression of cases dealing with delinquency proceedings is an oft-told story. This paper asks how these judicial decisions, legislative changes in delinquency statutes, and changes in the way juvenile law statutes are enforced have altered the perspective on the relationship between the state and the problem minor.

The cases discussed here, *Kent, Gault, Winship, McKeiver, Breed, Parham*, and *Martin*, all involve elements that cloud the analysis of the child/state relationship. One element in some of the cases is the role of the true parents. Most of the Supreme Court decisions in this area involve a direct balancing between the child and state, with the role of the parents separated out and often not discussed. The exception to this, the *Parham* case involving parental commitment of a child to a state mental health institution, raises questions of how the three parties relate to one another and how the parents can modulate the otherwise established structure and limits on the state's control over the child. *Parham* also involves the special character of mental health law.

These special elements can largely be factored out of the equation when describing the state's proper role regarding problem juveniles for two reasons: (1) the child is recognized as an independent legal entity throughout the caselaw; and (2) the question is not, at least initially, what powers the parent has over the child, but what powers the state has over the child. It is certainly a different question to ask how the state can limit the parents' control over the child, for example in the area of education or of child abuse, than to ask if the parent can expand the power of the state over the child, which is the question raised when the parent tries to commit a child to a state mental health institution (as in *Parham*). Thus, Supreme Court decisions in such areas as contraception or abortion for minors, and the cases regarding education (e.g. Wisconsin v. Yoder, 406 U.S. 205 (1972)), have little applicability to questions about the state's power over delinquents, or the effect of the parents on the delinquent/state relationship.

The cases should thus be initially considered in light of the few general principles and the competing notions of what juvenile law should be that have already been set out. The basic principles are: (1) children are different from adults; (2) they have liberty interests similar enough to adults that fundamental fairness requires many of the basic procedural protections accorded criminal defendants; and (3) punishment is an appropriate part of the juvenile court's task. The competing ideals are rehabilitation and punishment.

Kent

The first case to sharply question the principles and operation of the juvenile law system was *Kent v. United States*, decided in 1966. Kent held that the District of Columbia Juvenile Court did not have unfettered discretion to waive jurisdiction and remit a 16-year-old charged with housebreaking, robbery, and rape to adult court. The Court found waiver a "'critically important' action determining vitally important statutory rights of the juvenile" (383 U.S. at 556-557).

As is so often true, the apparently narrow procedural point was the fulcrum on which the lever of policy moved the law.[1] The case suggested that notions of due process and fair treatment should apply to juvenile proceedings, although the key issue was the appropriate standard of review of the waiver decision. Although the opinion acknowledged that the juvenile court was supposed to have considerable latitude in the waiver decision, the latitude could not be complete. The Juvenile Court Act did not confer "a license for arbitrary procedure" on the juvenile court (p. 553).

Justice Fortas drew on the procedural protections guaranteed to adults to shape the appropriate procedural protections for juveniles in waiver proceedings. This makes sense when the result of the waiver proceeding is adjudication in adult criminal court. Yet the opinion also offers child-specific justifications in shaping the protections extended to juveniles *even though the result of waiver is not the special benevolence extended to juveniles in juvenile court but the harshness of adult criminal court*. Among the ironies of *Kent* is that it requires children to be treated with special consideration--like children--before waiver, yet the decision began the movement toward treating delinquents in juvenile court more like adults in criminal court.

The court lashed out at *parens patriae*, stating that "the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness" (p. 555). *Kent* attacked the use of *parens patriae* to justify the lack of procedural protections accorded juveniles by questioning "whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults" (p. 555). While recognizing the traditional justification for a separate juvenile justice system, the decision set the stage for *Gault* by also recognizing the "evidence" that the child receives the worst of both worlds: "He gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children" (p. 556).

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[1] Justice Fortas centered the majority opinion on an interpretation of the District of Columbia Juvenile Court Act, but parts of the decision, largely dicta, suggested a constitutional foundation (pp. 551-552).

Specifically *Kent* found that procedural protections required by the statute as a condition of a valid waiver order "in the context of constitutional principles relating to due process and the assistance of counsel" included "access by [the accused delinquent's] counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the juvenile court's decision" (p. 557). The Court observed that it was "not requiring the hearing to conform with all of the requirements of a criminal trial or even of the usual administrative hearing" (p. 562), but the "essentials of due process and fair treatment" required the representation of counsel, which was held "not a grudging gesture to a ritualistic requirement . . . but of the essence of justice" (p. 561).

Gault

In re Gault (1967) extended due process to juveniles in juvenile court. The court recognized the existence of liberty interests for juveniles similar to those previously recognized for adult criminals. The Court rejected *parens patriae* as a shield impenetrable to constitutional scrutiny, yet it carefully reaffirmed the continued vitality of the special character of proceedings concerning juveniles. Thus, *Gault* rejected the deprivation of fundamental constitutional rights in the name of *parens patriae* without wholly rejecting its corresponding rehabilitative ideal.

The facts of *Gault* are familiar to lawyers and to many nonlawyers. The case arose after 15 year old Gerald Gault was committed as a juvenile delinquent to the Arizona State Industrial School until the age of 21 as the result of a complaint that he had made telephone calls "of the irritatingly offensive, adolescent, sex variety" to Mrs. Cook, a neighbor. The proceeding by which he was judged to be a delinquent was informal, unrecorded, and unprincipled. The Arizona Supreme Court required due process in such proceedings but held that the procedure leading to *Gault*'s commitment met those requirements (cf. *Parham*, discussed below).

Gerald's parents were never formally notified of the charges or of Gerald's rights, no counsel was present, the law justifying Gerald's detention was never specified, no transcript was made of any of the hearings, and the complainant, Mrs. Cook, never appeared in court. As there was no appeal permitted by Arizona law in juvenile cases, the *Gaults* filed a petition for *habeas corpus* in state court, which was denied. At the habeas hearing the juvenile judge testified that Gerald had violated a provision of the Arizona Criminal Code for which an adult could be punished by a fine of $5 to $50 or imprisonment for not more than two months. The judge also said he found Gerald a delinquent child because he was "habitually involved in immoral matters." The judge based this conclusion on a vague memory of Gerald's "referral" on a minor matter, for which there was no record, and on the recollection of Gerald's testimony including admission of other nuisance phone calls which were, according to the judge, "silly calls, or funny calls, or something like that" (p. 9).

The legal issue posed in *Gault* was whether the constitutional guarantee of due process applied to juvenile delinquency proceedings and if so whether due process was provided in *Gault*'s case. Relying heavily on *Kent*, Justice Fortas, writing for the five member majority (with concurrences by Justices Black, White, and Harlan, and a dissent by Justice Stewart), had no trouble finding that "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" (p. 13). For eight of the Justices, and perhaps for all nine, the only question was the role the due process clause played in juvenile delinquency proceedings.

The Court began by acknowledging that "from the inception of the juvenile court system, wide differences have been tolerated--indeed insisted upon--between the procedural rights accorded to adults and those of juveniles" (p. 14). The court criticized both the theory and the actual practices of the juvenile court. The opinion repeatedly refers to the juvenile system as arbitrary and subject to "unbridled discretion" (p. 18). The "claimed benefits of the juvenile process" were dissected, and the label "delinquent" recognized "to involve only slightly less stigma than the term 'criminal' applied to adults" (p.

24). The Court found the supposedly beneficial informal procedures to be harmful by dint of informality and recognized juvenile reformatories as "an institution of confinement" (p. 27).

The attacks on the practice of the juvenile law system led the Court to extend substantial procedural protections to minors in delinquency hearings. While commenting so harshly on the way society dealt with delinquents, the Court acted within its own perceived institutional limits to reform only the initial adjudicative components.

Justice Fortas observed that "proceedings involving juveniles were described as 'civil' instead of 'criminal' and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty" (p. 17). He rejected the analogy, and instead analogized delinquency proceedings to the criminal trial. The "essential difference" between Gerald's case and a normal criminal case was said to be the constitutional safeguards available to the adult (p. 29). The "wide gulf" between the treatment of Gerald and a person only three years older could not be bridged by any special analogy in the juvenile law.

Placing the foundation of the decision on the due process clause, the court held that a proper delinquency proceeding would require advance notice and pleading with particularity (p. 33). The Court also found a constitutional right to counsel, observing that "a proceeding where the issue is whether the child will be found to be delinquent and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution" (p. 36). The right to counsel was said to be the *child's* right, and the majority insisted on clear notification of this right to the parents, and the provision of counsel to those unable to afford a lawyer (p. 41). This right could only be waived by an "'intentional relinquishment or abandonment' of a fully known right" (p. 42, quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938)).

The privilege against self-incrimination was also extended to juveniles because "it would indeed be surprising if the privilege . . . were available to hardened criminals but not to children" (p. 47). The Court seemed to extend an even greater protection to confessions, admissions, and testimony by juveniles given outside of the presence of counsel than those given by adults because of the juvenile's lesser ability to understand the consequences of such acts and because of the complexity and effects of waiver. The court seemed worried not only about the possibility of coercion or suggestion, but also about admissions that were "the product of ignorance of rights or of adolescent fantasy, fright or despair" (p. 55). Finally, the majority suggested that a transcript of proceedings might be required, but did not face that issue or the related difficult issue of the right to an appeal.

Justice Harlan criticized the repeated analogy to the criminal trial in his concurrence, arguing that "the problem here is to determine what forms of procedural protection are necessary to guarantee the fundamental fairness of juvenile proceedings, and not which of the procedures now employed in criminal trials should be transplanted intact to proceedings in these specialized courts" (p. 74). He thought the use of the criminal trial model as a source of constitutional boundaries in juvenile court would "largely frustrate a central purpose" of the juvenile system by transferring procedures from "an intensely adversary system" (the criminal trial) to the juvenile courts, which might better be served by other procedures. Justice Fortas's use of the criminal trial necessarily reflected the values and punitive orientation of the criminal law system. This "criminalization" of juvenile procedure would seriously hamper the development of alternative procedures in the juvenile setting and would be particularly inapplicable to any remaining noncriminal jurisdiction of the juvenile courts such as status offense jurisdiction.

Thus, Justice Harlan chose to look at the whole juvenile justice system to determine the due process appropriate for juveniles at various stages under a notion of fundamental fairness. Justice Fortas, however, wanted to look at the proceedings in the context of similar proceedings and rights for adults to determine what procedures fundamental fairness would require. The significant difference between Fortas and Harlan is the context from which the juvenile's constitutional rights were to be drawn. Yet, in drawing his model from the criminal trial, Justice Fortas was not necessarily suggesting that the underlying rationale of the juvenile system need be the same as the adult criminal system. To the contrary, he insisted that the state's special interest in the child's welfare not only remained but flourished in the context of the new procedures.

Gault did not present a comprehensive rationale for treating children differently than adults when they commit the same acts: There was no need to face such a question. Rather, the Court recognized the ideals of the juvenile law system and the special state interests in the child, but found that, in line with this ideal, it was inconsistent for the state to deprive the child of fundamental fairness in the name of helping them. In other words, *parens patriae* could not be used as a shield against fundamentally unfair arbitrary procedures. Read extremely broadly, *Gault* could be taken as the death knell of the special system of juvenile law for lack of sound reason to retain it. A more modest reading is that *Gault* accepts, and even embraces, the special character of juvenile law and, in part because of that special character, found that juveniles must be afforded fundamentally fair, rational, and nonarbitrary procedures.[2]

As a legal decision, *Gault* was an easy and necessary case. It is hard to imagine what the alternative outcome would have been. Surely the Court would not accept the absurdity of Gerald *Gault*'s situation without further comment. Zimring (1982) noted that because *Gault* was an easy case Justice Fortas was able to retain the ideal of the juvenile justice system and in fact claim to be supporting the purposes of the Court while extending fundamental procedural protections to juveniles. It was a case where "we could have our cake and eat it too: that procedural rights would not inhibit the child welfare mission of the juvenile Court" (Zimring 1982, p. 79). Because the system and procedures that led to *Gault*'s incarceration were so clearly unacceptable, the only real dispute was which procedural protections to extend to delinquency proceedings. The different positions of Fortas, Harlan, White, and Black, although distinct as modes of interpreting the constitution, made little practical difference.

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[2] The meaning of fairness, or fundamental fairness, is often less than clear. A similar issue arises in the context of the law of public school programs (discussed in a separate paper): The characterization of programs as good or bad, beneficial or harmful, often determines whether the program violates fundamental notions of due process and equal protection. In the juvenile law context, the characterization of statutory intent and effect (see the *Martin* case, below) is critical to the viability of the program under a due process analysis, suggesting that, in the juvenile law context, a rehabilitative rationale is needed to distinguish special treatment given to juveniles that would not *or could not* be given to adults, such as the pretrial detention approved in *Martin*.

Whether *Gault* made sense as a policy matter is less clear. One of the results of *Gault* was to raise the cost of using the juvenile court to respond to minor delinquency and status offenders, the practical effect of which includes a greater focus on severe delinquency--acts that could be proven through traditional criminal processes and that would lead to an invocation of the strong dispositions available to the Court.

Although the opinion did not directly control or even consider status offenders, the basis of the opinion reflected a rethinking of the entire approach to juvenile justice, and the traditional status offense jurisdiction in the juvenile court was threatened. A central element of the omnibus theory was that all problem behavior, whether severe or minor, criminal or merely troublesome, would be dealt with by the same people, in a similar setting, and with similar powers over each minor. After *Gault*, the omnibus theory could not stand within the confines of the juvenile court on either jurisprudential or efficiency grounds.

Behind *Gault*'s narrowing of the role of the juvenile court was the requirement of culpable behavior--and the almost unquestionable requirement of *some* behavior--before a minor could be subject to harsher dispositions. This was implied through the acceptance of at least a partly punitive characterization of the aim of the juvenile process through the analogy to the adult criminal process. The analogy not only protected the juvenile through procedures in juvenile court, but it also opened up dispositions--forms of punishment--that would not comfortably fit within a purely benevolent rationale for the juvenile system.

GAULT PROGENY

The handful of key juvenile cases following *Gault* delineate a legal world drawn between two basic competing principles--rehabilitation and punishment--and two competing analogies--the adult criminal trial and the informal, special, caring process envisioned by the early juvenile justice reformers. Both views of juvenile law can be found throughout the modern supreme court cases, but two cases have tilted toward the punishment rationale and three have shifted toward the rehabilitation rationale. The cases shifting toward the punishment rationale have extended the criminal burden of proof to delinquency proceedings (*Winship*) and applied the double jeopardy clause to juveniles (*Breed*). The cases relying on the differentness of children have denied a jury in juvenile proceedings (*McKeiver*), denied substantial procedural protections on commitment to psychiatric treatment (*Parham*), and created a special set of state interests in the pretrial detention of juveniles (*Martin*).

Winship

The first major case to develop the *Gault* theme was *In re Winship*, 397 U.S. 358 (1969). The Court found that in delinquency proceedings the due process clause required the use of a burden of proof--beyond a reasonable doubt--equivalent to that required for criminal trials. In *Winship*, a 12-year-old boy was found by a preponderance of the evidence standard to have committed an act that "if done by an adult would constitute the crime . . . of larceny." The New York Family Court Act required the preponderance standard of proof. The New York Family Court judge acknowledged that the evidence might not establish the boy's guilt beyond a reasonable doubt.

The majority had little trouble finding the higher burden of proof mandated in criminal cases. In Justice Harlan's famous words, the higher burden in a criminal case was "an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correction of factual conclusions" (Harlan, J., concurring, 397 U.S. at 370).

The more difficult issue concerned the burden required in delinquency proceedings. Justice Brennan concluded that "*the same considerations* that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child" (p. 365, emphasis added). The majority refused to distinguish delinquency hearings by the "'civil' label-of-convenience which has been attached to juvenile proceedings" (p. 365, citing *Gault* at p. 50), or on the basis that juvenile proceedings were designed to help and not punish the child.

In applying the same burden of proof to criminal and delinquency proceedings the court insisted that the higher standard of proof "will not compel the states to abandon or displace any of the substantive benefits of the juvenile process" (p. 367, citing *Gault* at 21). Yet *Winship* struck at the traditional goals and structure of the juvenile law even more than *Gault*. It is *Winship* that firmly fixed delinquency proceedings in the procedural and substantive orbit of the adult criminal trial and attached the primarily punitive underlying rationale of the criminal law to juvenile proceedings.[3]

The assumption that juvenile determinations should be geared to *factual* accuracy forced the juvenile law into a punitive mold. The standard of proof is, as both Justices Brennan and Harlan noted, geared to factual accuracy because the criminal justice system is premised on the belief that special care be taken so that the innocent are not punished. It is the criminal act alone that gives the state control over the adult, and the high burden of proof supports the belief that in our system of criminal justice it is better that ten guilty men should go free than that one innocent man should be punished.

If the reality of the juvenile justice system contained not only punitive but preexistent beneficial and rehabilitative elements, these elements were, in effect, defined out of the juvenile delinquency determination itself by *Winship*, although such goals could in theory remain a valid part of dispositions. But such concerns could no longer come into play *unless* the juvenile satisfied the stringent requirements for being subjected to the punitive criminal law powers of the state. As Zimring (1982, p. 80) has observed,

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[3] Justice Harlan found that "while the consequences are not identical to those in a criminal case, the differences between a criminal trial and a delinquency proceeding will not support a distinction in the standard of proof" (397 U.S. at 374), first, because a factual error in a juvenile delinquency proceeding "exposes the accused to a complete loss of his personal liberty through a state-imposed confinement away from his home, family, and friends," and second, "a delinquency determination . . . stigmatizes a youth in that it is by definition bottomed on a finding that the accused committed a crime." Similarly, the court had found that the end result of delinquency proceedings was a "loss of . . . liberty for years . . . comparable in seriousness to a felony prosecution" (Ibid., I at 366, citing *Gault* at 36).

> If the mission of the juvenile court is to help delinquents, is it better that ten children who need help are rejected by the system than that one kid who doesn't need help receives "care and custody"? Acquitting a large number of delinquents is not too high a price to pay only if we live in a world where convicting them is not in their own best interests.

The *Winship* Court relied on those particular elements of *Gault* that stressed the similarity of a delinquency proceeding to a criminal trial and that undermined the rationales for treating minors differently than adults. Before *Winship*, the rhetoric and reality of the juvenile justice system reflected a primarily rehabilitative rationale. The limits imposed by *Gault* were on punishment without any procedural protections in the name of rehabilitation. After *Winship*, the role of flexibility, understanding, and special concern in the juvenile system remained unclear although the continued existence, and even the vitality, of that concern was not denied by the Court. In recognizing that the result of a delinquency proceeding was punishment, the court directly interfered with "the goal of rehabilitating the juvenile," which was one of the grounds upon which previous adjudications were expressly made. Rather than providing an alternative rationale for treating juveniles differently, the court only provided strong reasons, such as the effect of labelling, for treating delinquents like adult criminals.[4]

McKeiver

The next Supreme Court pronouncement on the juvenile court was *McKeiver v. Pennsylvania* (403 U.S. 528 (1970)), which held that a jury trial is not constitutionally required in juvenile delinquency proceedings. At first glance, this appears to be a substantial retreat from *Gault* which had rejected the denial of fundamental procedural rights in the name of helping a youth accused of delinquency. On closer examination, *McKeiver* does not seem opposed to the rationale in *Gault*: both cases emphasize that the law for delinquents is not identical to that for adults accused of crimes. The court in *McKeiver* offered a sense of the continuing vitality of the distinction, and in doing so reminded the courts of the "intimate, informal, protective proceedings" that were the "idealistic prospect" at the heart of the juvenile justice system (403 U.S. at 545).

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[4] Chief Justice Burger's dissent recognized that a significant element in *Winship* and *Gault* was "really a protest against inadequate juvenile court staffs and facilities." The alternative the Chief Justice provided was a call for "not more but less" proceduralization of the juvenile court system and a return to "compassionate treatment intended to mitigate the rigors and trauma of exposing youthful offenders to a traditional criminal court."

McKeiver offers a greater challenge to *Winship* because it suggests that the fact-finding function of the jury is not as important in juvenile proceedings as in adult criminal proceedings. *Winship* had suggested that fact-finding--the degree of certainty required in determining facts that would justify the state exerting its control over a juvenile--was all important in requiring the highest, most restrictive standard of proof for findings of delinquency.

The conflict between *McKeiver* and *Winship* also highlights the difference in the view of the relationship between delinquent and state. *Winship* viewed the state and child as adversaries in requiring the state, as with a criminal prosecution, to prove its cases to a high degree. The assumption, as previously noted, was that a finding of delinquency would result in some degree of harm, some deprivation, rather than just a benefit, and hence the finding was not allowed from more casual proof. The assumption underlying *McKeiver* seems to be that the state and child are not adversaries to such a great extent. The lesser adversarial posture minimized the value of the jury in its traditional role of imposing a wall in criminal cases between the state and the individual in the form of popular opinion. Thus, the case responds to and limits the partially punitive rationale that was recognized in *Gault* and was the driving force in *Winship*.

The court in *McKeiver* concluded that a jury trial would have the greatest marginal effect on creating a "fully adversarial" process, and that "one cannot say that in our legal system the jury is a necessary component of accurate factfinding" (p. 543). Certainly jury trials cause delay and time and expense, which are contrary to an immediate determination of a juvenile's needs. Thus, the court could have suggested that "requiring jury trial entitlements in delinquency proceedings would lead to escalating penalty structures, plea bargaining, and extortion in juvenile justice . . . which would recreate the shabby realities of adult criminal justice" (Zimring, 1982, pp. 82-83). It is thus surprising that the court decided to read its own opinions so narrowly, intending in *McKeiver* only to preserve the "meager . . . advance in the juvenile field."

McKeiver suggested that a belief in the rehabilitative rationale remained alive. The court supported experimentation by the states in juvenile law and in rehabilitative programs (403 U.S. at 547). Justice Blackmun recognized that "much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to cause and effect and cure. In this field, as in so many others, one perhaps learns best by doing" (403 .S. at 547). The court believed that "imposing" the jury trial on the states would limit such experimentation.[5]

Parham

In *Parham* v. J.R. (422 U.S. 584, 1979), often left out of discussions of the Supreme Court's juvenile jurisprudence, a minor challenged a state statute that allowed his commitment to a state mental hospital against his will and without a full judicial hearing. Unlike *Gault*, *Winship*, and *McKeiver*, this case involved the additional element of the rights of the minor in relation to his parents. The case also involved a setting outside of the juvenile Court.

The court took a restricted view of the rights that must constitutionally be extended to minors where the parent is thought to be making a beneficial parental decision for the minor. The court decided that minors could be committed by their parents to mental institutions without an adversarial hearing. A doctor's evaluations were found to supply all of the process that was due.

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[5] In *Breed v. Jones* (421 U.S. 519, 1975), Chief Justice Burger, writing for the entire court, applied the double jeopardy clause to a delinquency proceeding to bar waiver and transfer to an adult court after adjudication of guilt in the delinquency proceeding had begun. He noted that there was "no persuasive distinction in terms of the risk leading to double jeopardy between the proceeding conducted in this case . . . and a criminal prosecution, each of which is designed to vindicate the very vital interest in enforcement of the criminal laws" (pg. 531, citing *U.S. v. Jorn*, 400 U.S. at 479, 1971).

The parents' role in diminishing the procedural protections afforded the minor, compared with what would be afforded an adult in the same situation, is not easy to see. Because the state in *Parham* is being asked to control the child *in a way that it could not for an adult*, the prominent role of the parents in child development should not diminish the basic procedural protections the state would otherwise have to offer in committing an adult to a mental health facility. The comparison with adults is compelling here because the adult with which the child is compared would often lack the independent judgment of an adult not subject to commitment, and a representative would help make commitment decisions.

The child's independent legal existence is diminished by the decision. In the largely *sui generis* abortion cases, the Court has been forced to recognize the child's need to make an "adult" decision without the absolute guide of parental control and the need to recognize the independent legal rights of the minor. The same unsatisfactory pragmatism escapes the Court in *Parham* (Zimring, 1982, p. 84).

Parham does not stand on the parent's role as the decisive factor in reducing the process available to the minor, because the Court extended the power of the parent to state custodial agencies in a similar situation where no parent was involved. By doing so, the Court denigrated or ignored the assumed additional protection provided by the actual parent. The assumption of parental benevolence is highly questionable when the actual parent wishes to institutionalize the child in a state mental health facility. Such an assumption is impossible with the custodial agency.

Surely Gerald Gault's parents could not have eliminated the procedural rights provided Gerald just because they thought their troublesome child deserved to be held in a juvenile home. Committing a child to a mental hospital is more like sending him to the Arizona Industrial School without adequate legal process than allowing his parents to *insist* that his cavities be filled. This is not a situation where the state is a passive actor. The state is being called upon to forcibly detain the minor, and it is the state's power to institutionalize mental patients generally that permits the minor's detention. The parents, in trying to institutionalize their child, force the child/state relationship to the forefront: In doing so, the parents have only negligible interests in regulating the *child's* right, recognized in *Gault*, to fundamental protection from the exercise of *state* power.

The refusal to extend basic procedural rights to minors conflicts with the basic message of *Gault* that the special state interest in helping children cannot be used to harm or deprive a child of fundamental procedural protections against the exertion of state power. *Parham*'s vision of nearly complete parental control of the minor regarding all decisions, and the failure to differentiate between young children and adolescents in terms of the effect of parental control, weakens the basic notion developed in *Gault*. The court in *Parham* refused to deal with this tension, referring to *Gault* only once to deny that the two cases conflict.

Martin

In *Schall v. Martin* (104 S.Ct. 2403 (1984)), the most recent case to develop the theme of the special legal world of the juvenile, the Court upheld short-term pretrial detention for juveniles under the New York Family Court Act. The act authorized pretrial detention of an accused juvenile delinquent based on a finding that there is a "serious risk" that the child "may before the return date commit an act which if committed by an adult would constitute a crime" (104 S.Ct. at 2405).[6]

The court used the language of *parens patriae* to isolate the treatment of the child from that of an adult in the same situation. The proceeding was "fundamentally different" from an adult criminal trial because "the state has 'a *parens patriae* interest in preserving and promoting the welfare of the child'" (p. 2407, citing *Santosky v. Kramer*, 455 U.S. at 766). The court determined that the legitimate interest of the community in protecting itself and the special state interest in the child justified the pretrial detention, although such detention had not been upheld for adults. The community protection interest is, of course, the same in the adult and juvenile contexts.

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[6] The case is important for its recognition of the use of short-term predictions of dangerousness in the juvenile law and criminal law systems and for its potential in redefining and acknowledging the true purpose behind most pretrial detention (and bail). See Morris & Miller, "Predictions of Dangerousness," 6 *Crime and Justice*, 169 (1985).

Justice Rehnquist found the state interest reflected in the facilities used to detain juveniles, noting that "close supervision" is required to "promote the welfare and development of the child" under the act (p. 2414). The Court developed the idea of the beneficial nature of these special facilities: "Children are assigned to separate dorms based on age, size, and behavior. They wear street clothes provided by the institutions and partake in educational and recreational programs and counseling sessions run by trained social workers."

Not only did the court uphold short-term pretrial detention for juveniles, it also allowed different procedural protections in making that determination by not requiring the finding of probable cause required for any extended restraint on the liberty of adults accused of crime (104. S.Ct. 2415; cf. *Gerstein v. Pugh*, 420 U.S. 103 (1975)).

Martin may be the harbinger of both a new and an old approach to juvenile justice by the Court. The detention of the juveniles is upheld on the court's positive characterization of the results as "consistent with the regulatory and *parens patriae* objectives" of the juvenile justice system. This characterization is primarily positive and protective. The *Martin* approach could be used to justify not only different treatment of minors for the same acts as adults, but also for treatment of minors for acts for which adults could not be punished (status offenses). *Martin* can be read to recognize, and perhaps to begin to reconcile, the competing visions of the punitive and rehabilitative ideals of the juvenile justice system.

Martin to some extent pulls together the themes traced throughout these cases. The court continues to emphasize, sometimes without reason, that children are different from adults in the law. The starting point of *Kent* and *Gault* in using the adult legal system as the baseline for analysis of juvenile law has been retained. The Court has openly recognized, especially in *Breed* and *Martin*, that punishment is a valid part of the state's response to juvenile offenders. However, the unique powers over juveniles must arise not from the power to punish, but from the power, and perhaps the obligation, to rehabilitate, to aid, and to help the problem child.

STATUTORY REFORM

The purpose of this discussion is to identify basic trends in juvenile law reform, and to explore the fringe changes to see how the basic conflict in juvenile justice paradigms and ideals is reflected outside of the courts. The discussion also recognizes the shift from the courts to the state legislatures as the engine of reform. The courts sought mostly procedural reforms and danced around the substantive changes and shift in principles that underlay those decisions (e.g. the recognition of punishment as a key element of delinquency adjudication). The legislatures have made explicit substantive changes, including an open embrace of the shift from rehabilitation to punishment and incapacitation as the guiding purposes of the juvenile court.

There have been two general waves of juvenile law reform. Some states reacted to the judicial juvenile law revolution by providing additional procedural protections to accused delinquents. *Gault* shaped the first wave of legislative reform in the late 1960s and 1970s just as it set the character of the judicial revolution (Walkover, 1984, p. 525).

A more recent change has strengthened the response to severe delinquency. This trend reflects the widely publicized fears of rising youth crime, a perception that delinquents are committing more and more violent crime and that previous responses have been inadequate. The source, accuracy, and meaning of the perceptions of rising violent juvenile crime have been sharply questioned (Snyder, 1982). The National Crime Survey and the FBI reports suggest that the proportion of violent crimes attributed to juveniles actually decreased in 1970s, although the statistics do show an increase in both juvenile and adult arrests for violent crimes (Snyder, 1982, pp. 13-18). The statutory trend toward remaking the juvenile court in the image of the criminal court also reflects a more general shift in the criminal law toward a philosophy of punishment, incapacitation, and responsibility and the elimination of the rehabilitative ideal.[7]

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[7] Walkover 1984, pp. 527-528. Note the IJA/ABA Standards requirement that culpability precede imposition of criminal liability

Legislatures have strengthened both judicial and automatic waiver provisions (allowing waiver at the court's discretion or directing categorical waiver) and in extended dispositions that reflect notions of community protection and individual responsibility (Feld, 1980, pp. 172-188; Feld, 1978). In this recent wave of reform the response to the severe and chronic delinquent has shaped the tone and purpose of the entire juvenile court. Some statutes have gone well beyond the judicial shift toward punishment over rehabilitation and have made the juvenile court almost indistinguishable from criminal court (Feld, 1980, p. 242, suggesting abolition of the juvenile court in Minnesota; Feld, 1984, pp. 272-276). The head of the Office of Juvenile Justice and Delinquency Prevention observed in 1984, "juvenile crime . . . is increasingly treated by the states as a *criminal justice* issue" (Regnery, 1984).

Modification of juvenile law statutes has been fairly widespread and substantial, although few states have adopted wholesale revisions. The efforts at reform are more dissipated, with states taking various tacks (See Hutzler, 1982). There may be more widespread change in law or practice than is apparent from a survey of the statutes and secondary literature. Part of the problem in providing any sound, general analysis of changes in juvenile justice is the lack of surveys and of good research on specific jurisdictions, although good work is coming out of the National Center for Juvenile Justice in Pittsburgh and a few other sources (see e.g. Snyder et al., 1983; Hutzler and Nimick, 1982). Data are sorely needed on how systems are actually functioning and on the effect of even minor legislative changes. A more basic problem working against juvenile law reform is that the direction of change--the policy options--are uncertain even when the dissatisfaction with the present practice and the desire for change are evident (see e.g. Krisberg, 1984). This leads to immobility. Dissatisfaction is not enough: Legislators need somewhere rational and sensible to head.

(Juvenile Delinquency and Sanctions sec. 31) (*mens rea* a defense in all juvenile justice proceedings). See Snyder (1982) on the evidence of the perception of increasing juvenile crime. See Allen (1981) on the decline of the rehabilitative ideal in the criminal law. This trend is most clearly observed in the waiver and dispositional decisions. See statutes cited by Walkover (1984) at 524 nn. 85 & 86; Academy of Contemporary Problems (1982). See also Feld (1980), p. 1239.

Among the most profound, direct statutory changes is the redefinition of the express purpose of the special juvenile law, and in particular changes in the express purpose of the juvenile court. For example, in Minnesota before 1980 the juvenile code recognized that

> the purpose of the laws relating to juvenile courts is to secure for each minor . . . the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state.

After the 1980 revision, the rehabilitative purposes remained a primary concern for neglected or abused children, but for those accused of delinquency (Feld, 1980, p. 192),

> The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior.

The direction of change and the governing principle are not hard to discern from the language of the statute. Under the new law, the primary goal is punishment and incapacitation--interests of the state. Other states that have changed their purpose clauses include California, Florida, Indiana, Maine, New Mexico, Virginia, and Washington (see e.g. Ind. Code Ann. 31-6-1-1 (Burns Supp. 1979); Va. Code sec. 16.1-227 (Supp. 1979); Wash Rev. Code sec. 13.40.010(2) (West Supp. 1980).

As for other substantive changes, Hutzler (1982) provided a general catalogue of major changes and trends in juvenile law statutes. He found that since the early 1970s the special role and character of the juvenile courts has been "disappearing before an onslaught of law and order legislation passed in response to the demands of an outraged public, alarmed by what they see as an explosion of serious and violent juvenile crime" (Hutzler, 1982, p. 30). He found two types of change: removing certain offenders from the juvenile court to deal with them as criminals, and dealing with delinquents as criminals in juvenile court. Some of the basic recent statutory changes Hutzler (1982) identified include:

- 14 states excluding some serious offenders from juvenile court jurisdiction.
- Three states reducing the minimum age for waiver and three expanding the list of serious offenses for which juveniles may be waived.
- mandatory or presumptive waiver provisions in eight states.
- concurrent juvenile and adult jurisdiction in eight states.

New York, Vermont, and Washington have responded strongly to the perception that a more firm response is needed to severe and chronic juvenile offenders, and to juvenile crime in general. Even in these states that have shifted in their basic approach to chronic or repeat delinquency, the actual practice of juvenile justice institutions seems to have been only moderately affected (Walkover, 1984; Becker, 1979). It is instructive, nonetheless, to briefly explore these fringe states to see how the shifting models of the state response to deviant juvenile behavior are reflected in the legislative acts.

The 1977 revision of the Washington Juvenile Justice Act (1977 Wash. Laws, ch. 291, Secs. 55-83, codified as amended at Wash. Rev. Code Ann. sec. 13.40 (Supp. 1983)), analyzed by Walkover (1984) and Becker (1979) diminishes the primarily rehabilitative ideal of the earlier law and stresses the notions of accountability and punishment. The Act distinguishes between delinquents based upon their age, the severity of the offense, and prior juvenile record. The older the child, the more severe and violent the offense, and the longer the prior juvenile record, the more likely it becomes that the juvenile will receive extended incarceration or waiver to adult court. The Washington statute provides full due process protections at all stages of the juvenile justice process. Among the strongest symbols of the "new" juvenile court in Washington is the opening of juvenile court proceedings to the public.

The Washington legislature also limited the jurisdiction of the juvenile court over status offenders. For example, the juvenile court jurisdiction has been restricted to habitual truants and "Families in Conflict"--along the lines of more traditional neglect and abuse cases--

but otherwise the new act directs the response to troublesome rather than criminal behavior to the Department of Social and Health Services.

New York enacted "the toughest juvenile offender law in the country" in 1978. (Whisenand and McLaughlin, 1982, p. 11). In response to fears that the juvenile courts were not protecting the community, but only the youth, New York had already provided in 1976 that certain severe acts were to be treated differently in juvenile court (Juvenile Justice Reform Act of 1976, also known as the Designated Felony Act). The 1978 Act retained the 16-year-old age limit on the jurisdiction of the juvenile court.[*] New York and Vermont were among the very few states that did not have waiver provisions until this recent round of "reforms," in part because of this low age limit on juvenile court jurisdiction. The age for adult criminal responsibility was specifically lowered in the 1978 Act for offenses including murder, robbery, assault, burglary, arson, rape, sodomy, and kidnapping. New York's approach to delinquency, which shows the harshest response to deep end kids (serious juvenile offenders), indicates the inconsistency and confusion that result from efforts to impose punishment while holding the remnants of a concern for children all within a system set up to handle children differently from adults.

Vermont's 1983 juvenile statute resulted from a sudden "get tough" response to juvenile crime. (See generally 8 Vt. L. Rev. 173 (1983)). The statute substantially increased the severity of the response to violent criminal acts committed by those aged 14 to 17. Vermont also extended the definition of a delinquent to include those 10 to 12, and even younger for those who commit murder. The Vermont legislation extended discretionary juvenile court jurisdiction over delinquents aged 18 to 21. This change was instituted not to further "protect" deviant youth, but to protect society by eliminating the requirement that incarcerated delinquents be released from juvenile court jurisdiction upon turning 18.

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[*] As of 1981 the upper limit on juvenile court jurisdiction was the 16th birthday in three states (including New York), the 17th birthday in eight states, the 19th in the other 38 states and the District of Columbia (Snyder et al., 1983, p. 5). A few states in recent years have been increasing the upper limit on juvenile court jurisdiction to retain control over the juvenile rather than decreasing that limit to shift older delinquents into adult criminal court (Hutzler, 1982, pp. 30-31).

Waiver to adult criminal court in Vermont turns primarily on factors similar to those used in the Washington presumptive sentencing guidelines: age of the offender and severity of the offense. Vermont is not exceptional in expanding the scope of waiver statutes. In 1982 all but four states had some sort of statutory provision allowing the juvenile court to waive its jurisdiction and allow the juvenile to be prosecuted in adult court (Hamparian, 1982). Waiver statutes were developed to respond to what were initially considered exceptional cases that did not belong in juvenile court (p. 66), but the trend toward increasing punishment and decreasing the rehabilitative rationale in the "new" juvenile court suggests that waiver in exceptional cases was not a sufficient response to severe offenders. Although the Vermont law was not a carefully considered piece of legislation--it was passed in haste in special legislative session in response to specific crimes (8 Vt. L. Rev. 173)--it does reflect the volatility in the legislative response to increasing fear of juvenile crime.

The juvenile law revolution was sparked by the federal constitutional limits placed on delinquency adjudication by the Supreme court. But specific state legislative responses to changing perceptions of the purpose of juvenile law also reflect the tension between the competing desires of punishment and rehabilitation. Legislative initiatives have gone far beyond the judicial lead in making substantive changes in the juvenile law and in openly embracing the new primary underlying rationales of punishment and incapacitation. Much more work remains to be done in analyzing the effect and scope of legislative reform. More important, the bulk of future reform and innovation is likely to come from the state legislatures.

IV. THE CONTINUING DISTINCTION BETWEEN ADULTS AND CHILDREN

There is very little opposition, and none in the Supreme Court jurisprudence, to the notion that children should be treated in a special way, even when they commit criminal acts. The scope and effect of this difference, and the reasons for it, are often left unarticulated.

The Supreme Court remains tied to the notion of *parens patriae* and recently the Court has begun to offer some modern substance to support the continuing, firmly held conclusion that children are different. The Court suggested in *Martin* that *parens patriae* means that the state maintains a special, positive "welfare" interest in the "child." This interest seems to be reflected not in the procedures used to adjudicate delinquency, but in the dispositions that might result from a finding of delinquency. *Martin* suggests that rehabilitative alternatives whose constitutionality might be questioned if applied to adults would be upheld for delinquents.

Zimring (1978a, pp. 66-67) suggests two reasons for treating juveniles and adults differently. He argues that juveniles should be punished less severely because of a notion of diminished responsibility. He suggests that although most juveniles are able to understand their acts, they are often under greater pressures than adults and less fully aware of the consequences. The degree of responsibility would change with age and maturity, and eventually blend into the full responsibility of an adult as the individual is tried in criminal court. This reason focuses on the individual delinquent and not on the interests of the state.

The second reason Zimring offered for special treatment of juveniles is that they need "room to grow." A moderate response to deviant acts by juveniles allows a better chance for each youth to survive the experience of growing though adolescence in a complex and difficult world. Criminal behavior is probably not exceptional for many adolescents. There are few children who could not be found to have joined Gerald Gault in making obscene or prank phone calls. Yet many of these acts are part of learning, and the state response must be calculated to continue the education, not end it.

The notion of providing children "room to grow" is not based on a utilitarian notion, but rather on a sense of societal compassion, which recognizes the difficulties of adolescence, even when those difficulties produce extreme and violent behavior.

> [A] general policy of giving young offenders the opportunity to learn from and survive adolescent misdeeds represents an intelligent social policy option as a value decision independent of whatever empirical date we have that suggests it is "cost-effective"; values may dictate policies designed to achieve these ends, even if a substantial minority of the young do not outgrow patterns of law violation (Zimring, 1978a).

The combination of these principles has led Zimring to suggest a "learner's permit" approach to adolescence. The transfer of total responsibility should be gradual and highly individual. Thus, a sense of the patterns of human development, of the exceptional pressures and circumstances placed upon adolescents, and a notion that the state has an obligation, long recognized, to educate and protect children, all balance a utilitarian calculus of costs and benefits that might justify longer detention and harsher punishment of juveniles than of adults because of the higher juvenile rates for committing certain offenses, in particular offenses against property.[1] Zimring is not alone in suggesting lesser culpability as a basis for distinct treatment of juveniles (see e.g. Fox, 1970; McCarthy, 1977a; Walkover, 1984; Weissman, 1983).

Other justifications have been offered for the special treatment of juveniles. Before *Kent* and *Gault* a common argument for justifying special treatment of juveniles was the idea of a *quid pro quo*. Special treatment was the benefit conferred in exchange for lesser procedural protections. This argument was also used throughout the law of mental health to justify different treatment for those involuntarily committed under reduced legal standards (see *Addington v. Texas*, 441 U.S. 418

Property crime arrests peak at age 16 and drop in half by age 20. FBI, Uniform Crime Reports, 3 year average (1978-1980, U.S. Department of Justice, 1983, p. 32).

(1979), opinion of Burger, C.J.). Whether the benefit provided juveniles ever really balanced the lesser procedural protections, this justification now carries little weight as the fundamental procedural protections provided to criminal defendants have been extended to accused delinquents.

What differences do remain between juvenile court and criminal court procedures, such as the absence of a right to a jury trial in juvenile court proceedings, have been held to support a "right to treatment" for juveniles held in secure facilities (See Feld, 1980, p. 199. Thus, the *quid pro quo* rationale for treating juveniles and adults differently, at least in providing special dispositions, retains some practical force.

Utilitarian grounds may also justify treating juveniles, particularly young delinquents and predelinquents and adults differently. The costs and benefits of treating juveniles specially depends on the future expected harm (both the likelihood and severity) and on the cost and effect of the special program on those future harms. For severe and chronic delinquents, special programs may be justified because they have such high rates for committing certain types of offenses. This calculus might justify experiments or programs that could not be applied to adults or to other minors.

Even more persuasive on an intuitive level is the cost-benefit argument based on the potential effect of primary intervention programs aimed at children who have not committed delinquent acts, or have committed only minor acts but who are statistically identified based on their behavior and facts about their life as being a member of a group who are highly likely to become delinquent as they grow older (what I call a probabilistic delinquent). The expenditure of extra resources and the use of special powers might be justified based on the greater influence on future behavior such resources could have. This could be true because of more efficacious programs for younger delinquents and of the greater potential savings in reduced criminality.

Certain general aspects of juvenile criminal behavior worth keeping in mind reduce the additional costs in crime and injury from lesser incapacitation of juvenile offenders. First, crimes committed by juveniles tend to be less serious than crimes committed by adults;

second, when juveniles commit more serious crimes, they are less likely to use a gun or cause a death; and third, they tend to commit crimes in groups, raising the total number involved in crime without greatly raising the total harm (Snyder, 1982, pp. 19-20; Zimring, 1981). These factors should be considered when setting policy to respond to juvenile crime.

V. STATUS OFFENSES

Juvenile courts have traditionally dealt with a wide range of behavior going far beyond the commission of criminal acts by minors. Juvenile and family courts generally also included jurisdiction over children whose behavior, although not criminal, was considered inappropriate or troublesome, and children subject to neglect or abuse.[1]

This section evaluates changes in the approach to status offenders, distinguishes the legal worlds of delinquents and status offenders, and examines the basic requirements for jurisdiction over status offenders. Questions that help to define status offense jurisdiction include what behavior justifies such government power, whether the behavior need be culpable, and whether a behavioral base is needed at all.

Status offense jurisdiction in all of its modern forms, such as "persons in need of supervision" (PINS) and "Children in need of supervision" (CHINS) statutes, has changed in object and practice to a point where it can no longer be discussed in the same terms as the law for delinquents. The response to status offenders is heading toward a social service model that is highly crisis and response oriented. The legal worlds of delinquency and of noncriminal minor behavior have grown apart, the first more closely approximating the punishment aims and the institution of the criminal court, the latter finding social agencies as its model. The difference is far greater than if only one area had been changing.

The changes in what was traditionally status offense jurisdiction is most apparent from the dramatic shifts in recent years in the dispositions used for such minors, particularly in the sharp tendency toward deinstitutionalization of status offenders. This area is much less "legal" than the area of juvenile law for delinquents. The institutions dealing with status offenders are not legal institutions in the way that the juvenile court or the reform school is a legal institution, and hence the institutions for status offenders are less easily controlled or dominated by legal concepts (such as due process). Appropriately, the central point of this discussion is not a point of law but one of social science. The important changes in this area have occurred in practice and principle, not in the courts.

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[1] This paper does not deal with the issues raised by neglect and abuse, which involve the additional complex element of parental culpability, and the state's role in affirmatively intruding on the parent-child relationship to protect the child. See generally Wald (1975).

CHANGES IN PRACTICE

The courts have let status offense jurisdiction alone, and legislative initiatives have concentrated on the high end of the delinquency spectrum. Nonetheless, status offense jurisdiction changed in actual practice, because of extensive critical commentary and a change in underlying beliefs about the value of confined institutions in rehabilitation. There have been three dramatic trends in dealing with status offenders.

- Status offense cases handled in juvenile court and such cases generally have sharply decreased.
- There has been a strong shift toward deinstitutionalization.
- Secure confinement of status offenders has largely disappeared, and confinement with adult criminals has sharply decreased.

The precise numbers supporting these trends are less important here than a general awareness of the scope of the changes. Between 1975 and 1981 there was a 23 percent decrease in the national rate of status offense dispositions in juvenile court (Snyder et al., 1983).[2]

In a 1984 statement before a House committee, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) observed that the "deinstitutionalization of status offenders and the separation of juveniles from adult offenders in jails and correctional facilities has been a major emphasis of the state programs with a goal of the complete removal of juveniles from adult jails and lockups by December, 1985" (Regnery, 1984). As of 1984, he concluded, "deinstitutionalization of status offenders has largely been accomplished."

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[2] The estimated number of status offense dispositions in juvenile court in 1975 was 355,600, and in 1981 this dropped to 248,300. This shift was from a rate of 11.4 cases per 1000 for every child at risk (age 10 to the upper limit on juvenile jurisdiction) to 8.8 cases per 1000 (Snyder et al., 1983).

The use of secure detention for status offenders has also decline sharply since 1975. In 1975 an estimated 40 percent of all status offense cases involved secure detention. This was a greater percentage than for delinquency cases involving crimes against persons, property crimes, drug violations, and crimes against public order. In 1981, only 15 percent of cases involving status offenses were securely detained--the smallest percentage for all of these categories (Snyder et al., 1983, p. 2). The first sharp decrease actually occurred over a much shorter span of time--between 1975 and 1978--and then held steady for the next few years at the lower level.

Other calculations show dramatic declines in the use of secure detention and correctional facilities for status offenders and non-offenders. Between 1979 and 1984, the number of status offenders and non-offenders held in secure facilities declined by 88.5 percent according to statistics of the OJJDP. (In 1979, 199,341 status offenders and nonoffenders were held in secure confinement, and in 1984 approximately 22,833 were so held). Over the same period, the number of juveniles held in regular contact with incarcerated adults has declined by about 71.8 percent). More recently there has been a less dramatic decline in the numbers of juveniles held in adult jails and lockups for more than six hours (Regnery, 1984, App. B).

Commentators have noted some detrimental effects from deinstitutionalization and the decline in the use of secure detention. The initial evidence shows no difference in the recidivism rates of institutionalized and noninstitutionalized status offenders (Regnery, 1984). This seems a strong endorsement of deinstitutionalization, because it maximizes individual liberty and autonomy without apparently increasing subsequent offenses.

Less positive side effects of reducing institutionalization and secure confinement for status offenders include "net widening" effects, in which new programs are applied to individuals who previously would have been left out of the system entirely. Shifts in the labeling of status offenders through the broad discretion granted police and prosecutors has led to individuals being handled as delinquents who would formerly have been handled as status offenders. Some jurisdictions have failed to provide alternative services, and the lack of secure confinement has led to simply not dealing with status offenders at all. Finally, the effect of deinstitutionalization and the decrease in secure confinement "has encouraged and even forced authorities to neglect runaway and homeless children." The Administrator of OJJDP concluded that in the cities, "deinstitutionalization has meant, not transferring youths from reform schools to caring environments, but releasing them to the exploitation of the street" (Regnery, 1984).

If the result of not dealing with runaways is that a substantial proportion of those runaways turn to crime within short periods of time, then perhaps the absolute approach to deinstitutionalization does not make such good sense as a social policy. The OJJDP's suggested response is to be less absolute and strict in the ways in which state and local authorities are allowed to handle status offenders. Certainly the policy responses to all types of status offenders do not need to be the same.

The severe dispositions given status offenders were the source of sharp criticism. Ketcham (1977, p. 656) observed that "status offenders are detained and committed for longer periods on an average than juveniles who have committed armed robbery, burglary, or forcible rape" (see also Chein, 1976, p. 1), observing that status offenders in Minnesota stayed in institutions longer than serious delinquent offenders). These observations bolstered the case for deinstitutionalization and elimination of secure confinement for status offenders. The spirit of deinstitutionalization and the elimination of secure confinement is captured in Ketcham's (1977, p. 654) observation, "Like unsanitary hospitals, the juvenile justice system seems to be contagious and likely to infect its clients with further social deviance." Given the recent trends in deinstitutionalization, minimizing the response to status offenses, and extending the punishment element of delinquency dispositions, this is undoubtedly no longer true.

Among the most telling prereform attacks on status offense jurisdiction was its disproportionate effect on females, with as many as three to four times the number of female status offenders detained as male offenders even though more males are arrested (Ketcham, 1977, p. 657). The deinstitutionalization trends have greatly relieved this disparity. For example, in California the decline in arrest rates of status offenders and the decline in the use of secure confinement for status offenders at legislative initiative in 1977 had the effect of extracting mostly females from secure custody (Krisberg, Austin, and Melnicoe, 1984, pp. 3-5). Nationally, the decline in detentions was greatest for females, and detentions actually rose slightly for males between 1971 and 1982 (ibid., p. 4).

Status offense provisions are almost universally keyed to some sort of behavior by the child whether that behavior is noted by the parents, the police, the schools, or others. Although it is possible to conceive of the state dealing with a child purely because of his or her status--say as a black male teenager on the south side of Chicago--and not because of his status defined by particular behavior--such as truancy--this situation rarely arises.[3] The courts have not approached status offenders in terms of the culpable character of the behavior that the legislature has defined in each instance as the basis for a state response.

These trends in status offense practice indicate how far the philosophic caste and actual treatment of status offenders has grown from the traditional language, ideas, and institutions of the juvenile law.

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[3] It does arise in the context of special school programs and special social programs. The best examples are drug prevention programs in the schools. The legal landscape regarding possible primary intervention programs that would be applied purely or primarily on the basis of status are discussed in a separate paper "Legal Constraints on Intervention Programs in Public Schools" in this volume.

LEGISLATIVE REFORM

Most states have not eliminated status offense jurisdiction from juvenile courts, although this path has been frequently recommended and was seen by many as a logical step in the juvenile justice revolution (see e.g. Ketcham, 1977; Bazelon, 1970; Rinik, 1982; Rosenberg, 1983). For example, the 1977 IJA/ABA (Institute of Judicial Administration and the American Bar Association) Standards includes on its list of governing principles, "Non criminal misbehavior [status offenses; PINS "persons in need of supervision"] and private offenses [victimless crimes] should be removed from juvenile court jurisdiction." (IJA/ABA Standards, 1977). The ABA House of Delegates did not support the IJA/ABA proposal, and only the state of Washington has followed the guidelines with respect to status offenders. Even the IJA/ABA guidelines (pt. 2.1, pts. II-V) retained limited jurisdiction over noncriminal matters such as emergency authority where there is a sustained and immediate danger to the juvenile's safety. Also included are certain runaway cases, suicide attempts, alcohol and drug intoxication, and acute medical problems.

Status offender statutes, even in the face of such commentary, have proved "remarkably tenacious" and all 50 states and the District of Columbia still grant varying degrees of control to the juvenile court over children who have committed noncriminal offenses, although many of the statutes have been reformed (Rosenberg, 1983, p. 286). A few states purport to eliminate status offender laws, but even Maine, Delaware, Idaho, and Washington retain some power over such children either in a narrow set of circumstances or under a different name (see Rosenberg, 1983, p. 286; Hutzler and Nimick, 1982). Although status offenders are still subject to the guiding hand of the juvenile court, the language of status offenses has changed. Most statutes now refer not to status offenders but to MINS or "minors in need or supervision." Other contenders in the status alphabet soup are CHINs (children in need), PINS (persons), YINS (youth), and JINS (juveniles).

Before the dramatic changes in status offender dispositions had been fully realized, commentators questioned the real effect of these changes in labeling (Miller, 1979, pp. 66, 96) noted, "When it became illegal in some states to assign nondelinquent youth (PINS) to training schools for delinquents, the schools were simply renamed as treatment centers for 'persons in need of supervision.'" Ketcham (1977, p. 655) acknowledged the efforts to separate status offenders in definition and facilities, but concludes, "Only the semantics and definitions are distinct," and "In reality the dispositional treatment afforded a status offender hardly differs from that given a juvenile criminal offender." These observations have lost much if not all of their force.

At the margin, some blurring between status offenders and delinquents is still inevitable. Among the most difficult problems for jurisdictions that limit the state's coercive power over status offenders is whether the same limitation should apply to a child who continually refuses to take advantage of any of the "voluntary" or court directed aids (see Rinik, 1982, pp. 215-220). The effort to distinguish status offenders may operate to the detriment of some juveniles in the form of diminished protections provided to the accused delinquent.

The most common grounds for status offense power include running away from home, ungovernability (or being beyond parental control), liquor violations, truancy, and curfew violations. The total estimated number of cases of each type disposed of by the juvenile courts in 1981, and the rough percentage of each type based on these numbers, are: running away--72,100 (29 percent); ungovernability--55,800 (22 percent); liquor violations (not including drunkenness)--48,700 (19 percent); truancy--33,300 (13 percent); curfew violations--11,000 (5 percent); other status offenses--27,400 (11 percent) (derived from Snyder et al., 1983, p. 6).

The states use varied language to define status offenders (see generally Hutzler and Nimick, 1982). For example, Alaska defines a child in need of supervision as one who is habitually absent from home or who refuses to accept available care (Ala. Stat. Sec. 47.10.010(2)(A)(1979), and the Georgia code provides that an unruly child is one who is habitually truant, or who habitually disobeys parental commands, or who commits an offense applicable only to children, or who runs away from home, or who wanders the streets at night, or who violates a court order, or who patronizes a bar where alcohol is served without the presences of parents, or who possesses alcoholic beverages (Ga. Code Ann. Sec. 24A-401(g) (Supp. 1982)). Many statutes define minors in need simply to include a violation of an offense applicable only to children (see e.g. Ala. Code Sec. 12-15-1(4) (1977)).

Recent changes in status offense statutes have varied. Rosenberg (1983, p. 285) notes a trend toward specifying what acts a child must commit to come within the jurisdiction of the juvenile court. For example, until 1973 Texas had one of the most amorphous status offender laws giving its courts power over children "in danger of leading an idle and dissolute life." In 1973 Texas adopted a very specific statute detailing particular acts necessary to confer such power on the juvenile courts. This statute includes as children in need of supervision "those who on three or more occasions violate minor penal laws or ordinances, or who are habitually truant for specified periods or time, or who are runaways, or who are guilty of driving while intoxicated or under the influence of drugs, or who inhale vapors." (Tex. Fam. Code Ann. Sec. 51.03(b) (Vernon Supp. 1982)). In addition, many states now categorize status offenders separately from delinquents, although Rosenberg claims there is much overlapping (See e.g. Cal. Welf. & Inst. Code Sec. 601 (West Supp. 1980; N.Y. Fam. Ct. Act Sec. 712 (b) (McKinney Supp. 1981-82)).

A good example of modern status offender jurisdiction is Massachusetts, which provides for jurisdiction over runaways, truants, or stubborn children under a CHINS statute. The system emphasizes civil adjudications, and social services are used rather than incarceration. The Department of Social Services (DSS) administers many of these services (Rinik, 1982, p. 174). The DSS acts as both a provider of services and a referral center for other public and private services. Although the programs are run within a social service model, the CHINS determinations are still often made, and are always backed, by the authority of the court. The court can order detention, prescribe services, or order commitment. The process is voluntary largely in name because failure to cooperate with the DSS leads to the courtroom. The legislature clearly recognized the coercive elements of the "reformed" system in providing for court appointed counsel for children in CHINS proceedings.

Although the CHINS trial is said to be strictly a civil proceeding (Mass. Gen. Laws Ann. ch. 119, Sec. 39E), the allegations in a CHINS petition must be proved beyond a reasonable doubt (Sec. 39(G)). The use of the criminal burden of proof, like the Supreme Court's requirement of that standard for delinquency determinations in *Winship*, points to a recognition that culpability is necessary before the state can forcibly help the child. Massachusetts also provides for arrest, bail, and detention of CHINS in certain cases, again emphasizing the grasp of the delinquency model on the approach to status offenders even under a "liberal" statute. Children dealt with under the Massachusetts CHINS statute are still subject to stigma and the effects of labeling. The effectiveness of the entire system has been questioned, particularly for uncooperative children and children whose parents were not involved in treatment (Rinik, 1982).

The trend toward a social services model in dealing with status offenders fits with the source of many status complaints. Unlike offenses against person and property, where the police are the source of referral in the vast majority of cases (80-90 percent), status offenders are often reported by a relative, school, or social agency (Snyder et al., 1983).

There are also statutory efforts supporting the practical changes discussed earlier. Status offenders are provided by law with facilities entirely separate from those used from delinquents, and from institutions used for adult criminals. The deinstitutionalization and separation of facilities for status offenders have received unique support from the federal government in the form of the Juvenile Justice Delinquency Prevention Act of 1974 (42 U.S.C. Secs. 5601-38 (1976)), which provides federal funding for states that succeed in deinstitutionalization, the reduction of secure confinement, and the separation of facilities for status offenders from facilities for delinquents and criminal adults. The act has been uniquely successful in influencing and guiding state policy.

The caselaw in the area of delinquency and the juvenile courts, considered earlier in this paper, may provide at least an initial basis for considering the legal context of status offenders. This is particularly true of the *Martin* case.

APPLICABILITY OF DELINQUENCY CASES

The federal courts have generally not considered the constitutionality of status offender provisions, although they occasionally deal with collateral issues such as the legality of placing status offenders in secure facilities with delinquents or the adequacy of the facilities actually provided to status offenders. (Rosenberg, 1983, pp. 294-299). The IJA/ABA reporter noted that "Upper courts seem to have concluded, at least by implication, that reformation of the status offense jurisdiction of the juvenile court must be a legislative rather than a judicial task." Challenges in state courts to individual placements and findings of incorrigibility are occasionally successful (Rosenberg, 1983).

The courts have not placed any substantial legal limitations on status offense jurisdiction, which has been attacked by commentators on constitutional grounds of vagueness, cruel and unusual punishment, and denial of equal protection and substantive due process (see Rosenberg, 1983, p. 294), and on several policy grounds (see e.g. Rinik, 1983, pp. 162-174; Paulsen, 1979, pp. 224-225).

The lack of judicial intervention in this area leaves a wide policy discretion and virtually unlimited power in the hands of state legislators. The limits on status offense jurisdiction arise from the nature of the institutions and the goals of the system, not from constitutions. Nor is it likely that the court will apply any substantial limits in the near future, because of the less activist stance of federal courts in recent years, and limited precedent to draw upon in the states. More important, the direction of change in the status offense area militates against judicial intervention. Legal language and concepts are becoming less and less relevant to the way status offenders are handled. Some "legal" framework for status offense jurisdiction, largely hypothetical, may be culled from the principles in the key delinquency cases.

Gault could be extended to status offenders to require basic due process whenever a restraint on liberty may result, although *Gault* is directly applicable only to delinquency proceedings. Several state courts and several of the new juvenile statutes have specifically held these procedural protections not applicable in status offense proceedings (Rosenberg, 1983, p. 293).

The two cases with the strongest potential bearing on status offense jurisdiction are *Winship* and *Martin*. In *Winship*, in requiring a criminal burden of proof in delinquency adjudication, the Court necessarily decided that culpability was a fundamental principle in the juvenile law, as it is in the criminal law. Although status offense jurisdiction is based on acts that are obviously less culpable than delinquent acts, if *Winship* means that the state must base its intrusion into juveniles' lives on behavior considered culpable, then the types of behavior that could support status offense jurisdiction would be limited as well.

Martin may also provide a basis for validating special programs or services to status offenders because the Court's rationale was not specific to the context of delinquency and punishment. Rather, the principle justifying pretrial detention of juveniles generally explained the special state interest in the child. Thus, if they are challenged, status offender programs may be found valid if a court characterized the disputed program as "consistent with the regulatory and *parens patriae* objectives of the juvenile justice system." Under this approach, the validity of a program or treatment would turn on the court's characterization--positive or negative--of each program.

VI. CONCLUSION: NEW PARADIGMS IN JUVENILE JUSTICE

This paper has tried to identify the diverging models being created for severe and chronic delinquents on one hand and status offenders on the other. Where once there was one vision for juveniles in trouble, now there are two. The legal and social response to delinquents and to status offenders--the reasons for intervention and the responses by the state--can no longer be discussed in the same terms.

The Supreme Court jurisprudence and state statutory developments in the last 20 years have shifted the treatment of chronic and severe delinquents within the framework of the adult criminal court and toward the primarily punitive philosophy now in vogue in criminal justice. The shift continues toward a strict juvenile law with less of the rehabilitative ideals for which the system was originally created. The response to status offenders has shifted out of the juvenile courts, although the courts often retain power over status offenders.

Status offense jurisdiction, like delinquency adjudication, is generally responsive to the acts and problems of individuals. This is true of all of the traditional juvenile justice institutions. Because the institutions are developed to respond to individual behavior, they exclude from the current juvenile justice system the institutional capacity to develop and apply primary intervention programs. The legal framework for applying primary intervention programs in the public schools, the only social institution where such programs can conceivably be applied, is the subject of a separate paper in this Reader, *Legal Constraints on Intervention Programs in Public Schools*.

One of the ways a society defines itself is though its response to those who do not abide by its rules. Even more telling and complex is the relationship between the state and minors who violate the rules. In such cases, the state maintains a special interest in and obligation to the individual, and the individual is not a fully responsible member of the society. This paper has tried to draw the legal boundaries of the relationship between problem child and state.

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CHAPTER VI

LEGAL CONSTRAINTS ON INTERVENTION PROGRAMS IN PUBLIC SCHOOLS

by

Marc Miller*

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*J.D. 1984, The University of Chicago Law School. Law Clerk to Chief Judge John C. Godbold, Eleventh Circuit Court of Appeals (1984-1985). Special thanks for guidance and assistance belong to Franklin Zimring and Peter Greenwood. I would also like to thank Steve Gilles and Larry Kramer for their help with this paper.

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I. INTRODUCTION

The new juvenile courts and the social service agencies developed for troubled minors do not provide the principles or the institutions to deal with predelinquents and delinquents whose careers are only beginning. In the face of skepticism about the possibility of rehabilitation for severe and chronic delinquents an interest has developing in programs aimed at children before they get in trouble, or at least before they have much trouble (Greenwood, 1985). These ideas generally fall under the label of "intervention." This paper considers the legal framework for primary and secondary intervention programs in the public schools. These programs will be applied to groups of students without regard to delinquent tendencies and to probabilistic delinquents--those who are more likely than their peers to become delinquent.[1]

The ability to identify probabilistic delinquents is assumed although there is an active current debate on the ability to predict dangerousness and delinquency, and the legitimacy of using such predictions. See e.g. Morris and Miller (1985). Statistical prediction of future behavior is made based on some or all of six types of factors associated with chronic delinquency among urban males: (1) family characteristics; (2) biological or physical endowments; (3) familial experience; (4) predelinquent behavioral flags (including disobedience, truancy, lying, drinking, drug use, promiscuous sex, fighting, and school achievement); (5) criminal acts; and (6) the experiences, peer relations and environment that either reinforce or discourage delinquent tendencies (Greenwood, 1985).

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[1] Primary intervention programs deliver services to all youth regardless of their potential for delinquency; secondary intervention programs focus on youth who are in greater danger of becoming delinquent; tertiary prevention programs work with kids who have already been referred for assistance. This paper includes primary and secondary intervention when it refers to intervention programs. As the paper makes clear, the more difficult legal questions in the school setting arise in secondary programs where groups are treated differently.

Intervention is broadly defined because the purpose of this paper is to provide a legal framework for developing possible programs. Intervention means any program, treatment, resource, effort, facility or expenditure for a group of children or for specific individuals with the goal of changing patterns of immediate and future delinquency and criminality. Intervention may in some cases be as broad as the idea of education itself.

Public intervention programs require institutions with the power to observe and deal with a cross-section of children. Only one public institution satisfies the need: the public schools. The schools are the only delivering service institution that collects, observes, and deals with large numbers of children for extended periods of time before they interact with the established systems of juvenile justice.

It was not always so. The original goal of the juvenile court and the juvenile justice system was to help all children with problems. Behind the notion of status offenses--troublesome behavior for which an adult could not be punished but that could lead to exercise of juvenile court jurisdiction over minors--was the intention that all sorts of children, delinquents, and future delinquents would pass through the juvenile justice system.

The operation and purpose of the juvenile courts has been curtailed in the face of badly failed expectations. The new intervention strategies cannot operate within the current juvenile law legal framework. The juvenile courts increasingly deal with severe and chronic delinquents and operate, in adjudication and disposition, under the principles of the adult criminal court. These institutions cannot provide a setting for intervention programs. Intervention programs strive to avoid the dangers of labeling and miscategorization that occur in the juvenile courts and, to a lesser degree, in the responsive, problem-oriented institutions dealing with status offenders and other troubled children under PINS and CHINS statutes.

The use of an educational model and setting for programs intended to benefit problem children is not revolutionary. Schlossman (1983 at p. 962) noted that the "juvenile courts, as described by its founders, was to be as much a school as a court--a new branch of public education for errant children and negligent parents." According to Schlossman (1983, p. 963), the early reformers described the juvenile justice system primarily in educational terms. The progressive reformers "blurred historical distinctions between the purposes of civil law and public education in order to realize broader goals of social justice." Of course, the use of a school model in the juvenile courts and the implementation of school-based intervention programs are distinct, but the common thread of the educational goals and rhetoric of the original juvenile law system can be traced in the suggestion that schools be used to administer intervention programs.

The application of primary intervention programs in the school setting requires the integration of such programs with an extensive body of law developed without consideration of intervention strategies. Compulsory education laws generate a pool of adolescents, especially those at risk in large urban settings. But compulsory education laws do not define the *limits* on public schools in dealing with students. These laws make the public schools the obvious public institutions for intervention programs and help to describe the general purpose of the schools, but the limits on school power and discretion come from other sources.

Public school and education law regulates some aspects of the relationships among students, teachers, parents, school boards, and legislatures. The school law has developed contemporaneously with but entirely isolated from the "new" juvenile law. This school law developed, primarily in the 1960s and 1970s, to a point where special programs in the public schools must take this law into account. This paper brings public education law into focus within the lens of potential public intervention programs.

The courts use the doctrine of equal protection to fight racial imbalance in education and to provide an integrated school setting. Equal protection concepts are also used to protect other identifiable disadvantaged groups. Equal protection concerns are likely to arise in any special intervention program that disproportionately targets blacks. Due process notions are used to protect liberty interests of students and parents, especially in the area of school discipline. Other legal principles, such as freedom of speech and substantive liberty, also may come into play when individuals are singled out for a special program.

II. PUBLIC SCHOOLS AS LEGAL INSTITUTIONS

Very few legal limitations on intervention programs in the public schools have been recognized, and the limitations suggested by the school caselaw do not even provide a bare legal framework. The existing school cases do not more then suggest a few areas of legal sensitivity in designing possible intervention programs. But to conclude that intervention programs can be developed without reference to legal limitation would be an error. Intervention programs should take into account the role of the school as a legal institution, the limited role of legal doctrines in the school setting, and the possibility of shaping the new law that will develop from these programs.

Legal intrusions into other areas of school life suggest that courts are particularly sensitive to concerns of fair procedure, or the way in which individuals are treated when their substantial interests are at stake. Courts have also intervened in school programs to prevent unequal treatment of individuals or groups without proper justification for the separate treatment. Yet the extent of legal intrusion into the schools is largely limited to cases involving the treatment of individuals, such as in corporal punishment. Largely unrelated to intervention programs is the law regarding the employment of teachers and teachers' rights, particularly the right of free speech. The overall conclusion is that at present few cases pose any limit on potential intervention programs.

The relationship between the law and new intervention programs is symbiotic: For a program to survive legal challenge, it must be shaped by the law, just as the law is shaped by the programs that have and will come into the courts.

Careful development of intervention programs in line with the principles suggested in this paper will lead to the development of rational and principled intervention law. It is very rare that social scientists and educators, or anyone else for that matter, have the opportunity to so shape and guide such a broad area in the law. It is even rarer that this opportunity is taken. The most pertinent example for intervention programs is the tangled and tortured legal history of integration programs in the public schools. One does not have to think long to imagine what a difference careful if limited efforts at integration might have made before *Brown v. Board of Education*, or how much difference careful programs after *Brown* could have made in the 25 year pitched battle between school boards and federal courts. Careful programs might have led to more reasonable and successful solutions to the segregation dilemma, and to a less antagonistic and intrusive role for the federal courts in public education (consider the same point in the context of the abortion cases--e.g., Roe v. Wade, 410 U.S. 113 (1973)).

The school is not a legal institution in the same sense that a juvenile court is a legal institution. The school does not operate with legal concepts. Juvenile courts can be expected to respond to specific judgments of controlling courts, or to be challenged if they fail to do so. Legal rules have had much less influence in altering the behavior of schools as institutions and of individuals within the schools. This limits the types of rules that can be offered to regulate the school setting.

One anecdotal example will help explain the inability of the legal system to control the conduct of individual teachers. One Alabama primary teacher publicly stated that it did not matter what the Supreme Court or any other court decided about the constitutionality of prayers or of a moment of silence in the classroom. She said she had always used silence to control kids and to give them a chance to pray, and that she would continue to do so. The point is not that teachers ignore the Supreme Court's pronouncements on school prayer. The point is that courts have a limited ability to control what goes on in schools and in the classroom, and that this must be recognized in any discussion of the legal limits on potential intervention programs. It is impossible to simply transfer legal principles from a "legal" setting like the juvenile court into the school setting.

The Supreme Court has recognized the nonlegal character of the schools in formulating school procedural rules with relaxed requirements compared to non-school settings. For example, in *Goss v. Lopez* (1975), the court recognized a student's procedural due process rights when disciplined but required only relaxed procedures to protect those rights. Similarly, in *New Jersey v. T.L.O.* (1985), the court recognized that students have Fourth Amendment rights protecting them against unreasonable searches and seizures even on school grounds, but the court rejected traditional "legal" concepts surrounding searches and instead adopted a common sense approach for school administrators and teachers to follow. The court has thus implicitly recognized that schools are likely to be less responsive to judicial orders than juvenile courts, prosecutors, or the police.

Incomplete and varying levels of compliance with judicial decisions are possible, and perhaps likely, in the school setting. But compliance with orders concerning special programs is likely to be much greater than for other areas of school policy such as discipline or searches for cigarettes and drugs. Special programs require a positive act in the form of expending resources--additional time, facilities, and personnel. These acts, particularly for limited programs, are precisely the sort of institutional behavior that courts can control and monitor. If a court forbids a school from inquiring into students' family histories as part of the selection for a secondary intervention program, there is little doubt that the bar would be followed, or that further questioning of children and their parents would lead someone to complain and again bring the school before a judge.

III. NOTIONS OF EDUCATIONAL EQUALITY

Before the 1960s there was little question about legal limits on public school programs. Children stood as legal entities clothed and protected, for the most part, only by other legal entities--parents, school, and state. The children themselves had few individual rights recognized by the legal system. Schools were given wide discretion in applying educational programs to different children. Similarly, legislatures had wide discretion in setting up and funding special programs. Schooling was viewed as a discretionary benefit, children as the semi-autonomous recipients and beneficiaries. The same paternalism evident in the juvenile law of the period provided almost a total bar to legal intrusion on the administration of the public schools.

The Supreme Court's unanimous opinion in *Brown v. Board of Education,* 347 U.S. 483 (1954), raised public education to a position as the most fundamental and important public institution. That the Court should give education this special role is not surprising. The NAACP Legal Defense Fund had chosen education to spear the attack on segregated facilities because of its basic role in shaping and imparting values. The Court, in words now justly famous, used language of great breadth and power in describing the importance of the schools:

> Education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. . . . It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

In recognizing the role of the schools in society and in choosing to radically reshape the ground rules for public primary education, the court in *Brown* signaled the adoption of the schools as a province of the courts.

In the name of equal protection *Brown* rejected the presumption that inequality did not exist when different schools, teachers, and other resources were offered to white and black children. In the intervening years the notion of equality has taken on a diverse set of meanings, with each definition raised to the level of fundamental principle. One of the key tensions in the law of educational programs is between the principle of *Brown* and the principle accepted under *Brown*'s predecessor, *Plessy v. Ferguson,* 163 U.S. 531 (1896): When is separateness inherently unequal, and when does equality mandate separate or special treatment? *Brown* did not overrule *Plessy* and hold that separate but equal treatment was unconstitutional: Rather, the Court held that in education separate was inherently unequal. The principle of *Plessy*, forbidding inequality in the facilities, educational tools, and resources provided blacks and whites, along with the general notions of equality and integration in *Brown*, has played a key role in restricting and in mandating special school programs.

Although there is general agreement on the goal of "equality" in the public schools, the meaning of equality is greatly disputed. The constitutional notions of due process and equal protection have been at the heart of the battle over educational equality. Yet the rhetoric of equal protection and due process are not truly the sources, but only the machinery, on which a more fundamental set of conflicts are played out. The true conflicts stem from the uneven balance between family and state, the restrictions on the power of parents, teachers, school boards, and legislatures over the child, and the emergence of the modern independent autonomous legal existence of the child. *Brown* and *Plessy* have generated an educational mandate. This mandate does not seek only a general notion of equality--equal facilities, teachers, and materials--rather, the real inquiry has become which differences in educational resources are relevant, which unacceptable, and which required.

The *fact* of education at the elementary, primary, and secondary levels is one of individual student differences. Each student maintains a record, and the very purpose of that record is to distinguish among students. Each student has more than an academic record: Each student has a performance record, a disciplinary record, an attendance record, a health record, and an athletic record. Even in large urban schools students can be identified by the differences in their programs and records. Under the rubric of basic education and remedial education, of honors and advanced courses, of special education and correctional classes, students experience public school in many different ways. School administrators, teachers, school counselors, truant officers, businesses, and colleges depend on those records to distinguish and identify individual students, as occasionally do the police and the courts.

GENERAL EQUALITY

The decision in *Brown* reflected a fundamental choice about the meaning of equality in the school setting. Schools that are racially isolated are by law unconstitutional. *Brown* fits within the general and widely accepted notion of equality in public education that requires an "equal" and integrated schooling for all children. A general notion of equality says little about the actual form and substance of the education provided. Under general equality a school could provide each student with a teacher, chair, and desk, or with a full range of educational services. In other words, the general notion of *equality* does not describe or mandate any particular education, rather it mandates that whatever education is provided should be provided to all.

Starting with the universal recognition that all children are not the same at all times, it becomes apparent that a more subtle, individually oriented notion of equal education is necessary to achieve equality in any of the *ends* that education is supposed to reach (knowledge; ability to read, write, and add; ability to function in society; higher economic status) or to make meaningful equal access to the means of education (the facilities, materials, teachers and experiences). Only a more substantive notion of a satisfactory education than general equality can ensure that the notion of equality is not made meaningless.

PARTICULAR EQUALITY

Oversimplified, the particular notion of equality means an appropriate education for each child to realize each child's educational potential. The language of equality here emphasizes maximizing each child's achievement. The concept has been widely accepted for learning, physical, mental, and emotional handicaps.

Although this particular notion of equality uses much the same rhetoric as general equality, it is qualitatively different because it requires the identification of specific desirable educational means and ends by which the "equality" can be measured. In other words, a specific notion of equality requires explicit value choices so that the question becomes "equality of what?" It is somewhat of a paradox that the rhetoric of "equality" can be used to justify *different* resources and programs for each child. For example, tracking systems designed with equality of education as the motivating principle have been overturned and rejected under the identical principle (see e.g. *Hobson v. Hansen*).

Two examples of particular equality are resources for non-English speakers and programs for the handicapped. In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court found the denial of supplemental language instruction to 1800 Chinese speaking students in San Francisco to be in violation of the Civil Rights Act of 1964 and regulations pertaining to language instruction promulgated under that statute. The Court upheld regulations requiring "equal educational opportunity" and specific guidelines requiring federally funded school districts "to rectify . . . linguistic deficiencies" (ibid., p. 567). The narrow statutory point is not important. But it is important that although the Court went out of its way to avoid the possible constitutional basis for requiring individualized help in overcoming language difficulties, not one member of the Court raised questions about the constitutionality of a program that concentrated special resources on a large number of specific individuals.[1]

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[1] The practical limits on a notion of particular equality may be

A sense of the interaction among educational disabilities, constitutional rights, and law and rulemaking at the federal, state, and local level can be gleaned from the area of education for handicapped children. Courts in the early 1970s found a federal constitutional right to access to a public education for handicapped children (*Mills v. Bd. of Ed.* 348 F. Supp. 866 (D.C.1972); *PARC v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (1971), 343 F. Supp. 279 (E.D. Pa. 1972)). These and other cases, and slow progress by states in providing special education for the handicapped under previous federal grant programs, led Congress to enact the Education for All Handicapped Children Act in 1975.

The federal statute makes substantial federal financial assistance under the Act contingent on each state's demonstration that it has "a policy that assures all handicapped children the right to a free appropriate public education" (20 U.S.C. Section 1412(1)). "Handicapped children" are broadly defined to include children with mental, physical, and emotional handicaps and learning impairments. The Act requires an "individualized educational program" for each handicapped child and provides detailed procedural requirements to ensure its effectiveness. "Although the Act leaves to the States the primary responsibility for developing and executing educational programs for handicapped children, it imposes significant requirements to be followed in the discharge of that responsibility" (*Board of Education v. Rowley*, 102 S.Ct. 3039 (1982)).

The Education for All Handicapped Children Act is a model of programs focusing on the individual rather than the group. The Supreme Court has construed the specific provisions of the act to require "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction," rejecting a lower court interpretation that would have construed "free appropriate public education" to mean an opportunity to achieve each child's "full

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considered in applying the rule considered by the court in *Lau* in a school district such as Los Angeles where there are over 80 primary languages other than English spoken by primary students. This raises interesting questions about the effect of limited resources on the ideal of particular equality.

potential commensurate with the opportunity provided to other children" (*Rowley* at p. 3040).

The Court found the Act's particular equality principle to generate specific goals, but it shied away from the unbounded principle of particular equality lurking in the statute. Although *Rowley* was a case of statutory interpretation, the language of the provision of "free appropriate public education" was so broad as to leave room for interpretation by the Court. The majority sensed the tensions, both generally and in the context of the act, when it noted:

> The educational opportunities provided by our public school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom. The requirement that States provide "equal" educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. Similarly, furnishing handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement of "free appropriate public education"; to require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go. Thus to speak in terms of "equal" services in one instance gives less than what is required by the Act and in another instance more. The theme of the Act is "free appropriate public education," a phrase which is too complex to be captured by the word "equal" whether one is speaking of opportunities or services. (103 S. Ct. 3034, 3047.)

The *Rowley* case shows the clash of equality principles even within a broad statutory framework. Again, as in *Lau*, none of the Justices questioned the general purpose, propriety, or constitutionality of the Act. The provision of special resources to individual children to help with their education fits within broadly accepted beliefs about the role of public education.

Applying the special principle of equality within the context of unequal racial and economic effects in special programs brings out the tension between the various notions of equality. The racial question initially resolved in *Brown* has remained at the core of many of the legal battles over the schools for the last 30 years. The legal sensitivity to the pervasive racial bias in groups identified for special remedial programs, and for disadvantageous grouping in general programs (such as overrepresentation in the lower tracks of a pervasive tracking system) will color the selection of individuals in secondary intervention programs.

Both equal education for all and the appropriate education for each child emerge as basic motivating principles in American public education. One partial solution to the desire for general and specific equality while avoiding the harms of isolation and prejudice has been the concept of "mainstreaming," which has emerged in the literature, in school programs, and in cases and statutes in the 1970s. Mainstreaming supports the application of special or individual programs in the standard educational settings. It opposes the isolation and clearly identifiable separate treatment of individuals or small groups. Mainstreaming balances the need for individual or group application of resources with the desire not to isolate, separate, or label the individual or group. The ideal of mainstreaming has been widely accepted, and any program that violates the basic notion of mainstreaming would carry an extra legal burden if challenged.

Neither the general nor the particular notion of equality describe the function of the schools. But it seems that the schools must serve more than a narrow educational purpose in fulfilling a mandate which requires that an education be provided to children regardless of their linguistic, physical, and mental limits. The recognition of both notions of equality is apparent in IJA/ABA (1977, p. 5), which unhelpfully suggests, "All are treated equal because assumed to be equal, yet the individual differences of each must be recognized and protected." Not much more helpful is the full summary of the IJA/ABA program, which "adopts standards incorporating principles of equal treatment for juveniles similarly situated and of individualization requiring schools to meet the needs of differently situated students with differing educational programs . . . by creating a presumption of comparable treatment and a requirement that different treatment must be justified" (pp. 7-8).

Programs such as those for the physically handicapped students already have aims that go beyond simply fulfilling a student's learning potential as defined by the education of non-handicapped students. Other programs of general application are even more tangentially attached to the simple process of teaching. For example, to ensure that a poor child can go to school, the school must make non-educational efforts to see that the child is fed and healthy, and this helps to justify school lunch programs and health programs. If the purpose of schools includes teaching children behavior patterns that will give them a greater chance of success at functioning in the world, then potential programs can be quite broad in scope. The school can also respond to individual behavior that inhibits the school in carrying out its function. Such behavior includes truancy, misbehavior in class, and possible drug use, particularly on campus. If education is taken to include health, then not only widely accepted sex education programs but drug programs as well may fall within the rhetoric of educational purpose.

This is all to say that the purpose of the schools is unclear, and that the term "education" alone does not define such a purpose. The trend in the last decade to restrict the social function of the schools to mere "education" is exemplified by the IJA/ABA Standards Relating to Schools and Education (1971). The Standards suggest limiting school regulatory power to students' conduct. If allows regulation only if it furthers "the basic function of educating students," or if it furthers the host function of the schools including protection of persons or property, and protection "of the integrity of the educational process" (p. 61). Such a limitation on school power over students seems narrow, but the commentary on these restriction provides a definition of "education" so broad as to make the limit virtually meaningless. The commentary defines education as "the aggregate of all the processes by means of which a person develops abilities, attitudes, and other forms of behavior of positive value in the society in which he lives." Such an all-encompassing definition of school purpose makes little sense.

It is unrealistic [illegible] say that schools are meant to be a value transmission system for the society. Once that is accepted, the choice is a subtler one of which values may be transmitted and who should make that decision. The legal resolution of this question recognizes the diverse interests involved in educating each child. Thus, parents can remove their child from sex education, but they cannot keep the schools from teaching sex education. The conveyance of certain values are constitutionally excised from the school curriculum, the most prominent being the support of any particular religion.

Outside of such specific areas, limiting schools to "education" means limiting schools to teaching the values of the school board or legislature. If schools are to deal with diverse behavior and learning problems for each child to obtain the best possible education, then a wide range of programs and "educational" aims will be valid. The only way to fall outside of the proper scope of the school function is to set up a program that has *nothing* to do with individual learning and behavior.

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IV. THE RELEVANCE OF DUE PROCESS

The independent legal existence of minors has been firmly established. (*In re Gault*, 383 U.S. 1 at 12 (1966).) Minors even have at least some independent, enforceable legal rights in relation to their parents (see e.g. *Carey v. Population Services*, 431 U.S. 678 (1977)). More "adult" constitutional rights have been recognized where the child asserts his or her rights against the state, whether in the juvenile court or in the public schools. Yet the recognition of the child's independent constitutional status is only the beginning of the inquiry into the child's enforceable legal rights in the school setting.

Although students do not "shed their constitutional rights . . . at the schoolhouse gate" (*Tinker v. Des Moines School District*, 393 U.S. 503 (1969)), the court has repeatedly found that the state's interests in education and school administration modifies the legal rights of children in the school setting. For example, the student's constitutional rights to free speech and expression under the First Amendment have been recognized but modified at school (ibid.).

The recognition of children's constitutional rights that are modified as they pass through the schoolhouse gate appeared recently in *New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985) in which the court held that the Fourth Amendment protects students against unreasonable searches and seizures (this was not a guaranteed starting point as the court had just held that prisoners have no Fourth Amendment rights in *Hudson v. Palmer*, 104 S.Ct. 3194, 3200 (1984), and *T.L.O.* had been reargued at the court's insistence on the question of "what limits, if any, the Fourth Amendment places on the activities of school authorities," 105 S.Ct. at 738). Yet the court created lower standards to the bar against unreasonable searches in the school setting because of "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds" (105 S.Ct. at 742). The court held that neither the warrant requirement nor the requirement of probable cause to search applied in the school setting. As decided, *T.L.O.* fits within the cases giving guarded recognition to the independent constitutional rights of students.

The most important rights outside of equal protection in terms of intervention programs stem from the due process clause of the Fourteenth Amendment. The application of constitutional standards of procedural due process to decisions made about individuals, and particularly to school discipline, shows the general trend toward the application of constitutionally mandated procedures to the public schools. It also shows the special balancing of the students' rights with the interests of the state in educating children and maintaining discipline in the schools. The IJA/ABA report reflects the belief in the importance of proper procedure in the school setting in observing that the entire set of IJA/ABA standards "establish procedures to enable students to challenge the appropriateness of the educational decisions effecting them" (IJA/ABA, 1978, p. 7-8).

In *Goss v. Lopez,* 419 U.S. 565 (1975), the Supreme Court took its most dramatic step in extending the Fourteenth Amendment to students when it found a violation of a student's liberty and property interests greater than *de minimus* when the students were suspended from junior and senior high schools for up to ten days without minimal procedural protections. Although the broad language of the *Goss* opinion has not been followed (see, e.g., *Ingraham v. Wright*, 430 U.S. 651 (1977), holding the Eighth Amendment prohibition against cruel and unusual punishment inapplicable to school punishment), the idea that students have protectable constitutional interests in their education has been widely accepted.

The *Goss* majority helped to delineate the scope of these protectable interests in finding that a ten day suspension resulted in sufficient harm to invoke the constitution. Yet the same tensions evident throughout the legalization of the schools are evident in the due process context of *Goss*: The entire Court, majority and dissent, recognized the complexity and variety of school function and the need to avoid over-formalization and legal strictures that would impair that function. The "skeletal" procedures required by the majority for the suspension decision reflect the hesitation of the Court to intrude on the administrative discretion of school authorities. In reflecting on *Goss* recently in *T.L.O.*, the Court "recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures" (105 S.Ct. at 743).

The imposition of legal procedures on discretionary school decisions is uniquely difficult compared with the cases that extended fundamental due process protections to juveniles in the context of the juvenile court. School officials operate in institutions unaccustomed to, and perhaps inappropriate for, the exactness and formality of legal procedure. The dissent in *Goss* seemed worried that the Court was asking teachers and administrators to be lawyers as well. But the flexible procedures required in *Goss* were designed to meet this concern. Similarly, in *T.L.O.* the Court created a reasonableness standard for Fourth Amendment searches to "spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense" (105 S.Ct. at 744).

The issue of individual suspensions and expulsions have a *sui generis* quality in the context of other issues of school policy, including participation in school programs. Expulsion and suspension are close to punishment in form, and the harm to the student at some level can hardly be questioned. Further, disciplinary proceedings identify individuals as individuals; programs identify individuals as part of a group. Even the most controversial tracking and special programs have mixed beneficial and detrimental intent and effect, whereas punishment has an unambiguous detrimental effect. The Supreme Court's fallacious characterization of discipline as an important part of education (rather than an important part of running the schools) does not sidestep this difference. The discipline of students involves a *moral* judgment, which tracking and special education just do not have.

The proceduralization of school discipline was not such a great anomaly or change from other types of individual punishment. For better or worse, *Goss* has had a minimal effect on school administration (Zimring and Solomon, 1981), as many schools already had or could easily institute the simple, skeletal procedures for suspensions and other punishment required to abide by the Court's mandate. More interesting were the limits placed on the required procedures given the acknowledgment of the punitive nature of the decisions and the real interests at stake. These limitations stem from the perception of the special nature of the schools and decisions made about *students*. *T.L.O.* is likely to have the same sort of minimal effect because the Court's requirement for school searches is just that teachers and school administrators behave reasonably.

In the end, *Goss* and *T.L.O.*, in terms of both substance and procedure, say little about the possible limits on special school programs. Some procedures might be judicially mandated for required participation in a special program whose detrimental label or effect raised the harm of participation, through labeling or lost opportunity, to the level of the infringement of the sort of interest recognized in *Goss*. Even in such a case, courts would be unlikely to impose formal procedures on a judicial model but would be likely to use the skeletal procedures suggested in *Goss* as a model.

V. GENERAL SCHOOL PROGRAMS

This section explores the problems with tracking and other general educational and noneducational programs. In a tracking system, all students are separated, usually on the basis of past performance and standardized tests, into groups that are then taught to the level of students in each group. In a comprehensive tracking system, every student will be placed at some level in the track either by subject matter or for the entire academic program.

Special programs, in contrast, identify individuals or groups who are subject to special facilities or other resources. Some special programs have elements of tracking, such as when a group of students is separated or identified and then moves or learns at a special pace. The courts have been concerned with five basic issues in both tracking and special program cases. These are (1) the purpose or intent effect of the program on participants, (2) the actual effect on participants and nonparticipants, (3) the element of moral bias, (4) how participants are selected, (5) whether participants or their parents are informed, whether they consent, and whether they can challenge the participation.

School administrators and school boards have retained wide discretion in establishing and administering school programs, whether or not the programs were "educational." The Supreme Court continues to recognize the primary role of states and local bodies in running the schools. Discretion remains particularly broad with regard to programs offered to all or most students because the fundamental legal notions of due process and equal protection used in challenging school actions are diminished. Thus, if a school or school board wanted to add a special program in Russian or basket-weaving, or a noneducational benefit such as hot lunches, as long as the benefit is offered to every student in the class of possible participants (e.g., 8th graders) valid legal challenges are unlikely.

There are limits on this broad programming discretion. One possible limit, as with education, is in *requiring participation*. Programs that infringe recognized privacy interests, or First Amendment interests, of the student or family may be rejected entirely. (See e.g. *Merriken v. Cressman,* 364 F. Supp. 913 (E.D. Penn. 1973); *Tinker*, 1969.)

Programs that isolate or identify individuals or groups are more suspect, particularly if isolated individuals are labeled. As previously discussed, the tension among simple notions of equality, individual educational opportunity, and the dangers of isolation and labeling have been somewhat balanced in the 1970's trend toward "mainstreaming" and the codification of programs for the educationally disadvantaged at the federal and state level. The problems with such general programs can best be explained in the context of specific cases.

The seminal tracking case is *Hobson v. Hansen*, 269 F.Supp. 401 (D.D.C. 1967), *aff'd sub nom. Smuck v. Hobson,* 408 F.2d 175 (D.C. Cir. 1969), where black and poor students sued the District of Columbia Board of Education alleging that the tracking system deprived them of an equal education. The trial Court, in an endless opinion by Judge Skelly-Wright, described the track system as "a form of ability grouping in that students are divided in separate, self-contained curricula or tracks ranging from 'Basic' for the slow student to 'Honors' for the gifted." (269 F. Supp. at 406 - 07). The track system was just one of a series of special programs identified by the Court that were used to distribute educational resources, particularly to support the poor urban schools.

The curse of the tracking system, and the fundamental problem that led to its abolition by the Court, was the highly unequal racial distribution in the various tracks. The court did not find intentional, *de jure* segregation in the origin or operation of the track system, but the *de facto* racially segregated effect was held impermissible because of the "taint" of segregation, which "hangs heavy" over the actions of officials. This taint was unavoidable because the track system was developed after the desegregation cases. The resulting separation violated the plaintiff's right to "equal educational opportunity. "

The notion of "equal educational opportunity" has not been widely followed, and subsequent equal protection and statutory (Title VII) Supreme Court cases would probably make a mere finding of discriminatory effect in the absence of a finding of intent insufficient to support a similar claim (see e.g. *Washington v. Davis*, 426 U.S. 229 (1976)). In

Lora v. Board of Education, 623 F.2d 248, 250-01 (2nd Cir. 1980), the court noted that both Title VII and the Fourteenth and Fifteenth Amendments "prohibit only purposeful discrimination." Putting this in the context of general school programs that had a disparate racial effect, the Court found, "Before a school system is put into a judicial receivership there must be some [adequate showing of] segregated impact and purpose: that the defined action of the school authorities was intended to, and did in fact discriminate against minority pupils" (ibid., p. 251).

Although the rhetoric and principles of *Hobson* have not been followed, its specific facts aid in identifying potentially unacceptable elements of a intervention programs. The Court's basic objection was not that the track system was segregated but that it was segregated and fixed. The system did not live up in practice to the theory, which the Court implied was very positive. The tracks became rigid instead of flexible. The Court found the "pervading spirit" of the slower tracks to be "essentially a negative one: slow the pace, teach less, and hope that what is learned will be useful" (*Hobson* pp. 470-471). The theory of the slower tracks had been one of applying special resources to bring students with educational problems back or up to an acceptable level.

The HEW regulations under the Civil Rights Act of 1964 regarding special language instruction, which were construed in *Lau v. Nichols*, provide a model of the theory behind a tracking system. Those regulations required schools to "take affirmative steps to rectify the language deficiency," yet they also directed, "Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such languages skill needs as soon as possible and must not operate as an educational dead end or permanent track (ibid., p. 568).

The basic themes and tension enumerated earlier are all played out in *Hobson*. The confusion over the meaning and effectuation of a principle of equality is especially apparent. The language of equality of education, as the court recognized (at p. 444), underlies the notion of tracking. The idea is that the most appropriate, realistic, and helpful educational program, resources, and pace will be offered to each child, thus giving an "equal" education to the fast and the slow, the gifted and the troubled. The problem arises from the slaying of the track system by the same sword used to mandate special programs: the principle of equality.

The paradox runs deeper. The Court in *Hobson*, after soundly rejecting the track system, observed that "it is *imperative* that *special programs* outside the regular school curriculum be adopted so that the disadvantaged child has a real opportunity to achieve at his maximum level of ability." (p. 471, emphasis added). The Court did not stop at recommending remedial instruction in basic skills, but also suggested that the schools should provide "the opportunity to enjoy some of life's experiences" and should play "a significant role in shaping the student's emotional and psychological makeup" (p. 483).

The *Hobson* Court did not resolve the dilemmas it suggested in the legal notion of equality and in establishing (or requiring) valid special programs. The contradiction in invalidating special programs because of their disparate racial effects, yet suggesting that need and perhaps the requirement of programs to make up for educational deficiencies--in effect affirmative action--is akin to a relationship between racial discrimination and affirmative action programs. The asymmetry evident in equal protection law in other contexts (consider *University of California Regents v. Bakke,* 438 U.S. 265 (1978); *Milliken v. Bradley,* 433 U.S. 267 (1977)) also appears in these judicial discussions of special primary education programs.

In *Hobson* the court announced a narrow order restricting the operation of the school system. On appeal to the District of Columbia Circuit, 408 F.2d 175, Judge Bazelon played out the other side of the battle over school discretion and the role of the courts by substantially watering down the trial court's strict language. Regarding the track system, the court of appeals refused to become enmeshed in the "sea of factual contentions and difficult issues of educational policy" raised in the trial court's opinion. Although it did not modify the trial court's decree, the court of appeals stressed that the decree must be taken to refer only to the track system as it existed at the time of the decree. The school board's "discretion" was therefore not limited and it had the "scope and flexibility" to remedy the problems in the schools.

Hobson has shaped subsequent tracking cases. In *Moses v. Washington Parish School Board*, 330 F.Supp. 1340 (E.D. La. 1971), another federal trial court concluded that a tracking system with disproportionate numbers of black students in the lower sections was educationally detrimental to the black students. The court observed that "Courts are not school boards and do not derogate unto themselves the formulation of educational policies," but the warning seems to have had little effect on that same court's role as "the vigilant protectors of the constitutional rights of every American" (at p. 1345).

These tracking cases, particularly Skelly-Wright's opinion in *Hobson*, are out of date and would be unlikely to control the resolution of similar issues in new intervention programs. Nonetheless there are lessons to be learned from these cases. The crucial harm identified in these tracking programs is the hierarchical structure, which tends to inescapably place a negative label on the slower tracks, isolate them academically from the faster tracks, and thus fail to provide special resources and a flexible structure in accordance with the original promise of tracking. Delinquency programs should avoid such structures and the negative labels that are inevitably attached to at least part of the hierarchy.

VI. SPECIAL PROGRAMS

Special programs have been constitutionally mandated under the equal protection clause where the absence of a special program put a student or group of students in a particularly disadvantageous position. In *Pennsylvania Association of Retarded Children (PARC) v. Commonwealth of Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972), exclusion of mentally retarded children from the public education system was found violative of the equal protection clause. The court decided that the state must provide an education "appropriate to the child's capacity" whether or not the child was mentally retarded (p. 285). In *Mills v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972), exceptional children were classified and assigned to non-mainstream educational facilities. The court declared that because other handicapped children were given free public education, any exceptional child had a right, guaranteed under the equal protection clause, to a constructive education, including appropriate specialized instruction.

More appropriate for a consideration of public intervention programs are the constitutional limits placed on special programs instituted by the legislature or the school authorities. The law dealing with special school programs displays the same crucial, often implicit characterization evident with the general programs. The dangers of labeling and stigma are greater with special programs that identify individuals or small groups than with a general program dealing with large classes of students. The distinction between permanent, fixed, and isolated programs, and short-term, flexible, and blended programs also arises with specific programs. Mainstreaming comes into play throughout the statutes and cases.

The characterization of a program can stem from its express purpose, its actual purpose, or its effect. It is rare that courts will try to determine a "real" purpose different from that expressed by a legislature, although the same deference is less likely with a local school board or school administrator. Thus labeling, either nominal or descriptive, and the structure of the special program emerge as key elements for the validity of special programs.

The special school programs that are least likely to be legally suspect are those rewarding students and thus having such affirmative labels as "honors," and those programs that are aimed at overcoming specific educational handicaps and do not carry negative but only sympathetic moral overtones. Examples of this latter type of special program include special language programs and the federal Education for All Handicapped Children Act (1975). The legal validity of the first type of program was tested in *Berkelman v. San Francisco Unified School District*, 501 F.2d 1264 (9th Cir. 1974), where the creation of a special high school for students who had scored among the top 15 percent of junior high school graduates was challenged on equal protection grounds. The special school admitted lower percentages of black, hispanic, and low income students than the school district as a whole. The school also applied higher admission standards to female students than to male students to maintain equal numbers of female and male students. The school was thus a special program with a positive label, an unequal effect in terms of racial representation, and a physical and complete separation of program participants from nonparticipants.

The court upheld the school against constitutional attack on the grounds of unequal representation but rejected the separate standards used for female and male students. (The court would have found it hard indeed to uphold both: To do so, it would have to find that equal representation of females and males was important enough to overcome the pure achievement selection, while proportional representation of minorities was not at least equally important). Although finding no racial motivation to the school board's actions in establishing the special program, the court realized the necessity of testing the admissions standards because of the unequal representation.

The court tested the program under a standard of review that was higher than a mere rational relationship between the purpose and the program, but much less than strict equal protection review. The court upheld the program, finding the school district's selection based on past academic achievement substantially furthered the legitimate purpose of providing the best education possible for the students in the district. The cutoff point established for participation in the program and the special resources and status granted to participants were held to be acceptable because they were "the result of space and budget limitations, not the result of a perfect determination of who can and who cannot benefit from the program."

Thus although the program clearly isolated and labeled students it was a positive labeling and a beneficial isolation *for the students in the program*, and therefore, under the court's characterization, the program was upheld. What about the implicit negative labeling and other negative effects (of less integration) on the remainder of the students in the school district not included in the program? The court basically ducked the *Brown* integration issue and the effects on nonparticipants by diminishing the characterization of those potential harms and ignoring the effect of isolation. The court's argument here is worth quoting at some length:

> Those students not admitted to Lowell are neither denied a quality education nor relegated to an inadequate school. Rather, they attend one of San Francisco's seven "comprehensive" high schools. Unlike a "tracking" system in which the challenged classifications are "predictive" and isolate students of "less promising" ability, the classification here is based upon past achievement impartially measured. There is slight potential for psychic injury to a student from attending a comprehensive high school with the majority of the city's high-school students. Cf. Hobson v. Hansen (cite). We conclude that the district's legitimate interest in establishing an academic high school, admission to which is based upon past achievement, outweighs any harm imagined or suffered by students whose achievement has not qualified them for admission to that school (p. 1268).

The court did no more than to observe in a footnote that "The effect that the presence (or absence) of certain groups of students has upon the quality of education offered in a classroom is a much-discussed topic" (p. 1268 n. 6). This footnote was written 20 years after *Brown*.

The distinction from *Hobson* is only partially successful on the court's terms. The programs in this case were no less or more predictive of future behavior than those in *Hobson*. The two key differences were that the *sources* of information in *Hobson*, the racially biased tests, were more suspect and, more important, that the label in *Hobson* was seen as negative and the "honors" school in *Berkelman* as positive. It is unlikely that the use of standardized tests to create an "honors" group would create as many difficulties as the use of past academic achievement (the *Berkelman* court's "impartial" measurement) to create a school for bad students. The question of racial effects thus seems most potent and most likely to lead to judicial rejection when negative labels are applied to the minority group. The lack of any mainstreaming or scholastic level integration in the San Francisco program caused the *Berkelman* court little if any consternation.

The application of the federal Education for All Handicapped Students Act, discussed earlier, provides an example of the relationship among the characterization of the program, the type of program, and its constitutionality. The special, sometimes extensive resources applied to individuals or small groups as the result of such programs tend to be challenged not because they are so applied, but because they are not. In other words, it has not been the constitutionality of such acts but their application to individuals that has been questioned (e.g. *Rowley*.) The Act applies the idea of mainstreaming, and the labels the legislature has attached and the Courts have accepted have been positive, humanitarian, and helpful.

Of special interest for possible school-based intervention programs are school programs developed to deal with the behavior and education of problem students. The "problem student" automatically carries a negative connotation, and, as we have seen, the negative labeling is a crucial element in the legal attacks on such programs.

In *Lora v. Board of Education*, 456 F.Supp. 1211 (E.D.N.Y. 1978), *rv'd* 623 F.2d 248 (2d Cir. 1980), special day schools for children with severe emotional problems resulting in aggressive behavior in school were attacked because of the virtually total population of these schools by blacks and hispanics. The special schools were supposed to provide special teachers, smaller teacher/pupil ratios, and facilities designed to provide a "generally therapeutic" atmosphere to deal with the emotional and behavioral problems. Judge Weinstein, in a lengthy opinion, began with a plaintive cry about the difficulty of the social problems on which the controversy was built. "Laid bare by the dispute," he wrote, "is one of the most excruciating issues of our democratic society" (456 F. Supp. at 1416). This heartfelt complaint allowed the court to avoid the difficult due process and equal protection issues under the rubric of political judgments and social policy. The lengthy opinion *begins* with the observation that "hope for substantial improvements lies not in the courts but in the hands of those who control society's resources and of those who are trained and dedicated to use of pedagogic and therapeutic arts" (ibid., p. 1214).

The case explores the literature on special programs and briefly discusses the interwoven local, state, and federal statutes and programs that provided support for special programs in the public schools. The court noted that "New York City has had limited school programs for the handicapped for at least seventy years" (ibid., p. 1219), and that these programs, for "mentally, physically, and 'morally' handicapped children" (ibid.) were considered innovative and progressive. Special schools, called the "600" schools, were established for students with behavior problems in the 1940s. In response to criticism of the effects of labeling, the name of the schools was changed twice between 1966 and the present.

The court observed that certain changes in educational setting such as placement out of the mainstream require procedural due process (ibid., p. 1278). (See also *Mills v Board of Education*, 348 F. Supp. at 875--due process of law requires a hearing prior to exclusion, termination or classification into a special program (citation omitted; *Hairston v. Drosick*, 423 F. Supp. 180, 184-85 (S.D. West VA. 1976) (exclusion of a handicapped child from the regular classroom without procedural safeguards is a violation of constitutional rights as well as of the Rehabilitation Act of 1973). Procedures extended in these instances include hearing and notice. In the end, the district court in *Lora* provided essentially no relief to the parents of children placed in the special schools. The rationale, for all of the discussion and consideration of commentary, was essentially that the special schools are better than nothing, even if they have problems.

The most important case for evaluating the legal bounds of special programs not directly related to traditional educational goals is *Merriken v. Cressman*, 364 F. Supp. 913 (E.D. Penn. 1973). In *Merriken* a school tried to administer a program to 8th grade students to prevent drug abuse. The program, called Critical Period Intervention (CPI), was developed to identify potential users, to prepare necessary intervention, and to train school personnel to deal with problems and evaluate results. After initiating the program, the school began to require the written consent of parents for the participation of their children.

The program was challenged by an 8th grade student and his mother as an unconstitutional invasion of their right to privacy because of extensive questions posed to the student and family concerning the family relationships and childrearing. The court held that the program violated student and family rights to privacy, and the program was therefore enjoined. The court recognized, following *Tinker v. The Des Moines School District*, 393 U.S. 503 (1968), that students are not without constitutional rights in the school setting. "School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect" (ibid., p. 918, quoting *Tinker* at 511). Although recognizing the right to privacy in the child, the court avoided the question of whether a parent could waive that right without the child's consent because the waiver under the facts of the case was inadequate (ibid., p. 919).

The *Merriken* opinion is somewhat transparent, and does not explore any issue other than the invasion of the right to privacy. Even in the context of the decisive issue of the right to privacy, it is not clear whether the right is held by child and parent or only by the child. It is also unclear why the court had to explore the question of whether the child, rather than the parent or the family, had a right to privacy at all.

Yet the opinion is important in light of possible primary intervention programs because it hints at many of the elements that made the drug prevention program unattractive even with all of its undoubtedly good intentions. The factual situation is especially interesting because the special program was administered within the normal school setting in line with the concept of mainstreaming and because drug use is only tangentially related to the goal of learning. The court focused on the type of information sought by the school to administer the program, but the lack of trained personnel and the apparent lack of specific goals and administration all seemed to bolster the court's rejection of the entire program. No description of the expected intervention was given in the case.

VII. THE LEGAL ELEMENTS OF SCHOOL INTERVENTION PROGRAMS

The potential legal boundaries on intervention programs arise out of the special nature of schools as a legal institution. Very few legal limits on intervention programs in the schools currently exist, and limits from other areas have little applicability. It would be a substantial error to take the few cases that may relate to intervention programs and believe that in any way this described the legal universe for such programs. The broad principles and concepts supporting intervention programs should not and will not be controlled by the narrow, scarce, inconsistent, and dated precedent in cases such as *Hobson* and *Lora*, which are only tangentially related to the legal world of school intervention programs. They leave a virtually untrammeled legal field for the development of sound and effective intervention programs in the public schools.

This does not mean that intervention programs do not have a legal context, but that the legal context of such programs is unformulated. Because the schools have become the province of the courts, with the rights of teachers, students, and parents tied to constitutional notions, there is no question that intervention programs will be considered by courts. The following suggestions are meant to guide the development of intervention programs so they will survive legal challenge. Moreover, intelligent programs stand a good chance of reshaping bad law with a weak foundation.

The single most crucial element in the success of any intervention program is the characterization of that program as beneficial or detrimental. Any program characterized as a "delinquency" program would be guaranteed to fail. This is critically important given the highly pejorative connotation of the term and the sensitivity attached to the effects of labeling. Such a label would cast any special program into the category of negative labeling and thus be almost sure to fail. A mandatory "negative" program, or one that singled out black students disproportionately, would be particularly suspect. Similarly, a program that inquired into child abuse or other personal family history would be likely to fail unless that information came from public records.

The characterization of a program arises from its express purposes, the mode of selecting individuals to participate in the program, its operation, and its results.

The express purpose of intervention programs should be directed toward the language of education, health, behavior, and training. Social, health, family, sex, and drug education are now accepted parts of the public school curriculum. Schools are also widely recognized to have the power to deal with truants and with disruptive school behavior. This leaves tremendous room for designing programs with the long-range goal of diminishing delinquency and criminality. General programs, or primary intervention programs that apply to all children without regard for their individual tendency to become delinquent are most likely to be upheld.

Particular care should be taken in developing secondary intervention programs where specific individuals will be selected as probabilistic delinquents. Specific programs are subject to challenge based on disparate effects racial effect on equal protection grounds, although disproportionate effect *alone* will not, in the absence of intent to discriminate, be a violation of the equal protection clause (see *Washington v. Davis*, 426 U.S. 229 (1976); *Lora*, 623 F.2d (1980) p. 251).

Only specific programs that carry a pejorative label are likely to come under intense legal security. Thus, a specific program that was called an "honors" program or provided additional educational "benefits" is likely to be upheld on a simple finding of rational purpose by the school or legislature.

Ideal criteria for participation in a specific delinquency program should be facially neutral and of broad application. The program itself should parallel the normal school program as closely as possible. It should be administered within the physical boundaries of the school, and if possible within the standard classroom schedule, all in line with mainstreaming principles. The program should not be burdened with formal procedures. If the program is likely to be negatively labeled then notice to the parents and an opportunity for withdrawal should be considered. If no substantial liberty interest is threatened by the program, then the threat of court imposed procedures is less likely. Formal judicial-model procedures are unlikely in the school context in any case.

Particular care should be taken in selecting individual children for a special intervention program. Information used to identify the subjects of a primary delinquency program should be accessible from the public record or the school record and should not require the type of invasion of privacy, nor the notoriety, attached to the drug program in *Merriken*. Such information as truancy, absence, grades, and performance on recognized standardized tests administered within the established school program are all examples of information likely to satisfy these criteria. If possible, the selection criteria should not include any special testing that might fall to a claim of inherent bias or unacceptable discretion vested in school authorities. A conscious effort should be made to avoid or minimize disparate racial, sexual, and wealth effects in any intervention program.

An otherwise questionable program may be protected by: (1) requiring parental consent, (2) diminishing any disparate racial participation, or (3) applying the program to an entire (nonselected) group of students. Of course, each of these strategies has disadvantages. Requiring parental consent is expensive and risks losing children who are most at risk. Making a program generally applicable to the school population reduces the range of treatment options and may not be the most efficient use of school resources for those not at risk.

LEGAL DOCTRINES AND LEGAL ACTORS

- *Equal protection.* Consider the race and sex of participants. Work to diminish racial imbalance.
- *Due process.* Consider the process of selection for specific programs. Any treatment that might be labeled negatively requires particular care in how individual children are handled.
- *Parents' rights.* Notify parents when substantial rights are at stake. In major programs recognize the right of withdrawal. It may be worth notifying parents even of positive, minor

programs and even if an explicit withdrawal option is not offered.

- *The child's rights*. Consider the right of the child not to be punished, to receive an education, and to participate in activities with his or her peers.
- *School powers*. Keep in mind the broad policy discretion granted to local bodies: the traditional independence of teachers, schools, districts, and states in setting educational policy. Remember the strong school powers for maintaining order and discipline.

INSTITUTIONAL

- *General programs*. Programs applied to all children (a nonselected group) are less prone to attack than programs applied to a specifically chosen group. The program resources may be offered to children or parents outside of target group.
- *Purposes/labeling*. Characterization is the key to the legal success of intervention programs. Avoid labels altogether if possible. Use traditional education terms and goals to describe programs.
- *Selection of participants*. Care in sources of information. Notification when substantial programs and required participation.
- *Mainstreaming*. Keep programs in the physical boundaries of the classroom and school day when possible.
- *Temporary*. Make programs temporary, with participation renewable. Do not fix or make permanent programs or labels.
- *Procedures*. Provide rational procedures, although not necessarily formal procedures, and keep careful records. Be consistent in program administration.

Other factors to keep in mind in designing intervention programs are that the school is not a legal institution, rather it is a social institution, and courts therefore view schools from a removed perspective. This limits the type and frequency of judicial intrusions into school policy.

The legal terrain of school law leaves substantial room for the pursuit of public intervention programs. The purpose of public education has clearly been conceived in broad enough terms to encompass objectives that lead to both a better educational experience for each student and a greater ability on the part of each student to function in the world. Working within the minimal criteria in the existing law, and the common sense principles suggested in this paper, there is a broad opportunity left for experimentation and implementation of new intervention efforts. The development of a rational and sound intervention law rests in the careful and conscientious design of intervention programs.

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CHAPTER VII

THE BIOLOGICAL BASES OF CRIMINAL BEHAVIOR

by

Michelle Freier

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I. INTRODUCTION

This paper explores the ways in which a behavioral biological orientation may contribute to understanding the causes of criminality and aid in identifying individuals at risk for engaging in criminal behavior. In the United States, the notion that biological factors affect criminal behavior historically has been neglected or denigrated. This hostility toward biological explanations arises largely from the sociologically damaging and intellectually repugnant record of biological determinism in the 19th and early 20th centuries. Extravagant claims, meager evidence, and implicit notions of racial and ethnic inferiority were hallmarks of the constitutionalists, typologists, and eugenicists such as Lombroso, Sheldon, and Burt (Dinitz, 1977). They argued that aspects of constitutional inferiority caused criminal behavior. Their use of faulty research designs, sloppy methods, and invalid statistical analyses discredited the biological framework in the study of crime (Gould, 1981).

In general, more recent investigators of human behavioral biology have avoided these pitfalls and have emphasized the contributions that particular biological processes (e.g. selected brain chemical messenger systems) make to such complex patterns of human behavior as mother-infant attachment, sexual activity, or the assumption of leadership roles. Contemporary behavioral biology eschews the sweeping simplistic explanations that attempted to link behavioral and biological phenomena in the past. In keeping with this modern orientation, this report examines circumscribed biological processes and discrete behavioral measures.

This paper adopts an interactive approach that highlights the interplay between physical and environmental factors in eliciting criminal behavior. In some social settings, biological factors may predispose humans to engage in criminal behavior. However, biological predispositions are limited by and expressed in particular environments. For example, an adult male with an extra Y chromosome is generally tall and reported to have diminished intelligence and emotional control.

Formerly thought to be predestined criminals (Shah, 1970), many XYY men now appear to be normal. In those that do become criminals, it may be that tallness combined with decreased intelligence and emotional control lead to a greater likelihood of aggressive encounters and possible injuries.

An interactive approach also stresses that environmental factors may directly alter biological processes. For example, in rats and monkeys, enriched environments increase brain size, brain chemical activity, and problem-solving ability, thus demonstrating that the existence of biological contributions to criminality in no way reduces the importance of documenting social influences on criminality.

Despite its potential utility, the interactive, bidirectional relationship between physical and environmental variables is often neglected or ignored. For example, investigators examining brain mechanisms sometimes forget that the nervous system operates *in an environment* and may attribute violent crime solely to brain dysfunction. In similar fashion, sociologists concentrate on social class, ethnic, and cultural differences in criminality and often view delinquency as purely environmentally determined. However, this perspective overlooks the substantial variability in criminality within any social group. Poverty, race, and age may be predictors of delinquency; but most adolescents, including those from economically disadvantaged and ethnic minority backgrounds, do not become criminals.

A biological approach has been used successfully in studies of schizophrenia and other types of psychopathology. In the past two decades, appreciation of the interplay between biological and environmental factors in determining schizophrenia has grown enormously. Psychoanalysts no longer oppose efforts to study the role of genetic predispositions in schizophrenia. In parallel fashion, neuroscientists and physicians have become increasingly sensitive to the effect that the environment may have on the biological processes associated with schizophrenia. Because schizophrenia research has struggled to place biology in proper context and has successfully adopted a biosocial orientation, it may serve as a model for research on the biology of crime.

This paper considers the possibility that the use of an analogous biological framework might aid the study of criminal behavior. The next section develops this perspective and delineates parallels and divergences between biological research in schizophrenia and criminality. After summarizing historical developments in schizophrenia research bearing on the field of biology of crime, the paper examines theoretical orientations, methodological considerations, and directions for future research that may unite the two fields. In each case, insights derived from the more practiced discipline of mental illness are used to point to potential advances for fledgling efforts in the biology of crime.

The third and fourth sections summarize the extant data pointing to a biological contribution to criminality. These data are organized developmentally and by subdisciplines. In Section III, there is a description of genetic, prenatal, and childhood factors that some believe may influence the expression of criminal behavior. Subsequently, Section IV explores the purported biological underpinnings of criminality among adults. The concluding section summarizes the current state of knowledge in criminal biology with thoughts on how known differences might be used to understand and identify individuals at risk.

II. CRIME AND MENTAL ILLNESS

Over time, there have been distinct changes in the way mental disorder was viewed. Especially relevant for the field of criminality is the paradigmatic shift from viewing schizophrenia as a social disease to regarding it as a biomedical disorder. As will be shown, criminality has gone through some developmental stages in parallel with schizophrenia but is still viewed primarily as a sociological problem. Three broad classes of models have been used to explain the origin of schizophrenia. The models differ primarily in the degree to which they postulate physical versus environmental factors as responsible for the disease. For schizophrenia and presumably for crime, the model integrating nature and nurture is most convincing.

Many problems confronted by investigators of schizophrenia are analogous to those faced by researchers in the biology of crime. Both disorders share complex behavioral manifestations and as yet uncompletely specified biosocial origins. Consequently, strategies that have been useful in the veteran field of mental illness may be successfully employed to solve analogous problems in criminality research.

Schizophrenia usually begins in early adulthood, although retrospective studies suggest that schizophrenics may be withdrawn, introverted children. In the early stages, patients typically withdraw from external reality and feel depersonalized, as if their identities were lost. Schizophrenia usually develops gradually and, in its complete, full-blown form, is marked by several sets of symptoms. Motor behavior is distorted, ranging from catatonia (immobilization) to frenzied, purposeless idiosyncratic movements. Perceptual hallucinations (most commonly manifested as "hearing voices") are present. Schizophrenic patients have disordered thought processes that often cause their speech to wander aimlessly, unable to meet a goal (called "looseness of association"). Thought disturbances also commonly result in distorted concept formation and delusions that cannot be altered by persuasion or evidence (e.g., paranoid delusions that unseen forces are controlling their behavior). In schizophrenia, emotions are expressed inadequately or inappropriately. Schizophrenics may be overwhelmed with anxiety or rage, moods that are unrelated to the situation at hand. These disturbances in motor behavior, perceptions, thinking, and mood make it difficult or impossibe for schizophrenics to function normally. They are generally disorganized, impulsive, unpredictable, and divorced from reality.

Epidemiologically, there are two distinct patterns of schizophrenia: early and late onset. The two types also differ in the circumstances leading to the breakdown, severity of symptoms, and eventual outcome. Early onset or childhood schizophrenics tend to break down suddenly with no apparent environmental trigger, display more severe symptoms, and remain chronic schizophrenics with less likelihood of recovery. Researchers generally suspect that biological predisposition plays a more important role in early than in late onset schizophrenics. Categorical differences between early and late onset schizophrenics resemble a distinction made between early and late onset delinquents. This apparent resemblance will be explored in more detail when current issues in schizophrenia research are discussed.

HISTORICAL DEVELOPMENTS IN SCHIZOPHRENIA[1]

Early Period

Before the 18th century, schizophrenics were often thought to be possessed by the devil and were burned at the stake or banished to asylums. In more recent times, the notion emerged of treating mentally ill people, rather than simply restraining them. During the 18th century, such physical factors as vapors and pressure on the brain were thought to cause schizophrenia. Medical treatment by alchemists and early physicians consisted of bloodletting, purging, and inducing convulsions with camphor. The belief that physical factors underlay schizophrenia continued into the 19th century, with heredity viewed as another possible cause of psychosis.

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[1] Most of this information is drawn from Lehmann's (1980) review.

Middle Period

In the late 19th century, heated conflict developed between psychiatrists who believed that mental disorders were due to physical brain disease and those who asserted that mental disorders arose from psychological forces. This dispute over the physical versus the environmental determinants of schizophrenia continued for years.

The early 20th century saw the rise of a psychosocial view of mental illness. Especially influential was the Freudian view that schizophrenia arose from disturbances in a person's family relationships. With this new orientation, psychoanalysis became a preferred treatment for schizophrenia. During the 1940s and 50s, this school of thought dominated American psychiatry.

Political and social forces fashion a climate in which science functions and "objective" scientists are hardly immune to the prevailing sociopolitical ambience. Therefore, it is not surprising that approaches to the understanding and treatment of criminality have evolved in similar fashion to the changes over time in schizophrenia. An early period of postulated constitutional defects underlying criminality was followed by an antibiological period, where explanations of criminality were distinctly psychosocial. However, the two fields diverge here. In the late 1950s the discovery of antipsychotic drugs revolutionalized psychiatry, revitalizing the biological approach to the treatment and study of schizophrenia. No such change has occurred in criminality.

Late Period

During the past quarter century, the most important trend in the approach to schizophrenia has been an increased emphasis on the biomedical aspects of the disorder. This change in priorities is clearly reflected in the budget of the National Institute of Mental Health (NIMH). In the 1970s, NIMH's schizophrenia research program devoted six times as much funding to biomedical studies of the disorder as it did to research on psychosocial causes and treatments (Mosher, 1980).

The revolution in psychiatry began with the discovery of antipsychotic medication, and there have been many beneficial spillover effects. First, these drugs have revived psychiatry as a *biomedical* endeavor. Countless studies have been done to detect the biochemical foundations of psychiatric disorders. Many of them use the antipsychotic action of these medications as a framework for understanding the causes of psychoses. Furthermore, biological psychiatry as a valid discipline has been firmly established. Genetic studies comparing the incidence of mental illness in affected families with that in the general population have yielded compelling evidence in support of a hereditary contribution to psychoses. Second, antipsychotic medications seem to have a normalizing effect on schizophrenics. When such medications alleviate symptoms such as hallucinations and delusions, outpatient psychosocial therapy becomes much more beneficial.

In contrast, crime continues to be regarded as a psychosocial problem. Within this framework, attempts to investigate potential biomedical bases for criminal behavior are considered illegitimate, reactionary, and dangerous. The notion of biological causes of criminality offends Americans because it is viewed as a denial of fundamental equality for all persons.

But a biomedical approach to schizophrenia has resulted in important advances with potential benefits for those afflicted with or at risk for schizophrenia. Two biological markers have recently been identified in some schizophrenic patients and their family members. The first, a biochemical difference, is a low level of the enzyme monoamine oxidase (MAO) in the blood. This difference may reflect the mechanism by which schizophrenia operates or may be simply a correlate of the disease. Interestingly, most schizophrenics who have low MAO levels are chronic rather than acute patients. Buschsbaum, Coursey, and Murphy (1976) examined the relationship between MAO levels and behavior in normal college students. They compared students with the highest MAO levels with those having the lowest levels. Students with low MAO activity reported more frequent psychiatric counseling and problems with the law. In addition, their families had an eightfold increase in the rate of suicide or attempts over families of the high MAO subjects. MAO levels appear to be inherited and may affect the amount of the brain chemical dopamine[2] acting in the central nervous system. Consequently, this finding may well reflect the mechanism by which schizophrenia works.

The second characteristic is a physiological risk factor. It consists of a disorder of smooth-pursuit eye movements first described by Holzman, Proctor, and Hughes (1973). Essentially, 65 to 80 percent of schizophrenic patients and 45 percent of their first degree relatives follow slow-moving objects with jerky, interrupted eye movements. These findings are exceedingly important. Confirmed biological abnormalities have been demonstrated in schizophrenics and in the relatives of schizophrenics. These characteristics may serve as markers of those at risk for some types of schizophrenia. There are still many unanswered questions about the distribution and meaning of these traits, but a critical tool for prospective research and intervention is available where none existed before. Potential parallels do appear to exist in biological criminality. A constellation of physical traits, known as minor physical anomalies, have been linked to problem behavior in very young children (Waldrop et al., 1978). Moreover, prospective studies have pointed to depressed autonomic nervous system responsivity to sensory stimuli as a marker of future delinquency. However, these data have not been received enthusiastically; and until the prevailing concept changes of what it means to behave in a criminal manner, this pattern of response to biological data is likely to continue.

CAUSALITY THEORIES

Psychiatric theories on the origin of schizophrenia and criminologic accounts of the genesis of delinquency can be envisioned as lying along a continuum. At one end are notions of biological determinism; at the other, ideas of psychosocial causality. The nature/nurture controversy persists under the guise of these extreme theories. Biological extremism, known as genetic-biochemical theories[3] in psychiatry, maintains that a genetic or chemical factor causes schizophrenia. In other words, this approach argues that a single gene is responsible for a specific metabolic error, which in turn accounts for the disease. This sort of explanation is somewhat reminiscent of the constitutional inferiority ideas promulgated by Lombroso, who argued that some individuals were "born criminal."

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[2] The more widely accepted theory on the etiology of schizophrenia is that it is caused by an overabundance of dopamine in the brain. The amount of dopamine present is roughly inversely proportional to the level of MAO.

The other end of the spectrum is occupied by the so-called life-experience theories, which deny that physical factors play any role at all in schizophrenia. This type of extremism explains schizophrenia solely on the basis of environmental factors that either compromise the psychological development of an individual's ego or that create profound unresolved conflict. Thus a schizophrenic individual might be reacting to a pathological mother-child relationship or a deviant family atmosphere. In criminology, this type of explanation is widely used to explain delinquency. Virtually all American criminologists rely on sociocultural explanations and regard criminal behavior as essentially learned and adaptive conduct.

The predisposition-stress model lying in the middle of the continuum stresses the interaction between biological and social factors and is probably the most useful framework for viewing both mental illness and criminality. This model holds that genetic factors result in inherited physical tendencies, which, when coupled with some environmental stressor, may elicit the disease. Following the pioneering work of Kety and associates (1968), this model has been used extensively in schizophrenia research. For example, Mednick (1970) suggested that pregnancy and birth complications in high-risk[4] neonates might be the stressors that act upon a genetically predisposed physiology to elicit schizophrenia.

The genetic-biochemical and life-experience theories encounter many technical and conceptual problems that make them less compelling than the predisposition-stress paradigm. For example, proponents of the genetic-biochemical school frequently cite single gene diseases such as phenylketonuria (PKU) as support for a single-gene origin in schizophrenia. However, there are many important contrasts between PKU and schizophrenia. For example, schizophrenia typically appears in early adulthood, while PKU is evident at birth. In contrast to schizophrenia, PKU is an all-or-none disorder; it manifests little individual variability. Furthermore, many aspects of the natural history of schizophrenia cannot be explained by a single-gene origin. These include the gradual deterioration that characterizes the onset of the disease and the observation that a substantial proportion of all schizophrenics recover. Environmental explanations, however, are unable to successfully counter the incontrovertible support for a genetic contribution to schizophrenia.

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[3] This classification scheme follows Rosenthal (1970). In this case, genetic refers to a single gene. This class of theories is so named because one gene is thought to cause a biochemical defect that results in the behavioral pathology.

[4] High-risk individuals are defined as those who have an affected person among their first-degree relatives (parents or siblings).

Clearly, from the data available on schizophrenia, genetic factors predispose to this disorder. Just as clearly, the inheritance of a set of genes does not inevitably lead to schizophrenia. There must be as yet unidentified environmental factors that, in combination with an inherited genetic makeup, produce a schizophrenic individual. These factors are most likely to be found in the family and in the sociocultural environment of the child who becomes schizophrenic. A similar biosocial perspective might be profitable in the study of at least some types of crimes.

ISSUES

There are at least three methodological issues in schizophrenia research analogous to those challenging criminologists. These issues revolve around the need for a reliable and valid system for classifying individuals. Perhaps the most basic issue in schizophrenia is how to define the disorder. This important topic has long occupied investigators. This definitional problem actually has three parts: (1) how to differentiate schizophrenics from nonschizophrenics (such as other psychotics and normal people); (2) given that an individual is schizophrenic, which of the subtypes is he; (3) within a subtype group, how can those who will recover be distinguished from those who will not?

Classification

In the past, efforts to differentiate schizophrenics from other psychotics relied first on differences in prognosis or outcome and later on the varying severity of the disease. But neither approach proved to be completely reliable and valid. In fact, medicine generally uses neither severity of symptoms nor outcome to define a disease. A more satisfactory system for defining and classifying schizophrenia would be based on its etiology. Proponents of this view have long argued against the use of symptoms as classificatory criteria. Unfortunately, the etiology of schizophrenia remains unknown.

Interest in classification and diagnosis remains intense. This concern persists because both treatment and research interests are compromised by the use of an unreliable, invalid system. Previous investigators, confronted with extreme variability among schizophrenics, have suggested that the disease may actually be a collection of disorders with different courses and etiologies. Researchers believe that research findings will improve if homogeneous subgroups can be reliably identified.

Classification is a critical problem in the study of crime as well. Such research is severely hampered by a lack of consensus about what constitutes delinquency and criminality. In fact, lack of consistency in defining constructs such as psychopathy is frequently cited to account for contradictory findings across studies.

Biological criminality investigators would benefit from sharpening classificatory boundaries in parallel with schizophrenia. These distinctions need refining:

1. differentiating criminals from noncriminals;
2. defining offender subtypes, and
3. distinguishing acute from chronic offenders

However, criminologists have only recently begun to consider these methodological issues. Consequently research on the causes of criminal behavior lags far behind schizophrenia research.

One issue that investigators of schizophrenia are resolving is the domain of the disorder. This field has had a long history of classificatory changes, and the concept of schizophrenia became very broad in contemporary American psychiatry. This conceptualization, represented as a schizophreniform spectrum (Heston, 1970), included severe neuroses and affective and acute psychoses. As a result, the rate of diagnosis of schizophrenia was appreciably higher in the United States than in Great Britain (Babigian, 1980). There was a danger that schizophrenia would simply become a synonym for severe mental illness.

This past decade has seen the emergence of a clinically and scientifically useful trend--the concept of schizophrenia is narrowing (Haier, 1980). Increasing use is being made of explicitly defined operational criteria derived with an emphasis on reliability in the diagnosis of this disorder.

In many ways, criminality is more difficult to investigate biologically than is schizophrenia. Crime is a multidimensional sociocultural construct. As such, it includes a diverse set of complex behaviors ranging from white collar corporate crime to inner-city homicide. Moreover, the conception of criminal behavior changes, both across cultures at a given time and within cultures over time. It is therefore exceedingly difficult to study crime as a unitary biological phenomenon.

For example, antisocial or psychopathic individuals frequently serve as subjects in studies on the biology of crime. The diagnosis of antisocial personality disorder is based mainly on legal transgressions--thefts, vandalism, drinking, etc.--and these individuals are described as insincere, impersonal, and remorseless (Cleckley, 1964). However, because society's view of antisocial behavior varies, in wartime an antisocial individual might become a leader, whereas in peacetime such behavior would land him in jail (Jaspers, 1963).

Most research on biology and delinquency was done in Denmark. Subjects defined as delinquent were those listed in the Danish National Police Register. Their offenses involved primarily "traffic, theft offenses, with a few instances of arrests for violent crimes" (Mednick et al., 1981, p. 222). Perhaps in the context of Danish norms, this definition of juvenile delinquency is sound, but most Americans would not regard a traffic offense as an indicator of delinquency. Therefore, although biologists interested in criminal behavior would like to generalize their findings over time and across cultures that may be very difficult to do. In sum, there are potential pitfalls in trying to describe the biologically defined entity. Laws change quickly; biology does not. Had homosexuality, for example, been part of a definition of criminality, that law would now be obsolete. Especially great care must be taken to develop criteria for defining delinquency. Because adolescence is a time of independence and rebelliousness, minor deviant acts might easily be confused with the precriminal behavior. At present, much more work is needed to refine the boundary between normal behavior and criminality.

Differentiation of Subtypes

A second issue that challenges researchers is the validity of schizophrenia as a unitary disorder. Considerable variability among schizophrenics has long implied that schizophrenia may be several disorders. In the past decade, acceptance of schizophrenia as a unitary disease has diminished, and researchers are examining the heterogeneity of the disease(s) rather than the commonalities (Haier, 1980). As a result, differentiation of schizophrenics into valid and reliable subgroups has been a primary concern of researchers.

Variability among schizophrenics may be thought of in two dimensions: qualitative and quantitative. Qualitative variation is evident in the different symptoms patients exhibit and is traditionally used to separate individuals into subtypes (paranoid, catatonic, hebephrenic, and simple). Quantitative variation refers to differences in the severity of symptoms and the course of the disease. Based on quantitative differences, individuals are classified as acute or chronic schizophrenics.

Unfortunately, clinical and physiologic attempts to establish valid subcategories of schizophrenia have not yet been completely successful. However, the study of biological variables may help define subtypes in the future. Typically, investigators have approached this problem by using traditional descriptive symptoms to define subgroups. Once defined, these subgroups are compared on biological variables of interest. However, the classical descriptive symptoms initially used to construct the subcategories may be too diffuse. As a consequence, it is not surprising that inconsistent and contradictory results arise from studies of "homogeneous" subgroups. Either different subtypes manifest the same biological deficit, or subjects within a single subgroup differ with respect to the variable of interest.

Recently some investigators have relied on nonsymptom (e.g., genetic or biologic) variables to create subgroups (Buschsbaum and Haier, 1978). For example, Asarnow, Cromwell, and Renick (1978) reported that schizophrenics with a family history of the disorder differed neurophysiologically and cognitively from those with no such family history. Goldstein and Halperin (1977) found that neurophysiologic criteria discriminated acute from chronic cases better than did more traditional classification methods.

Past and current efforts to elucidate the biological underpinnings of criminal behavior have amassed information using a chaotic mix of subjects, including juvenile delinquents, thieves, violent criminals, and antisocial individuals. Biological criminologists urgently need to develop a scheme for differentiating subcategories of criminal behavior. In fact, the data underscore the heterogeneity of these individuals. For example, several studies examining brain waves and skin conductance found that violent offenders differed from property offenders. Investigators of criminality are just beginning to divide their subjects into different subtypes. More work is required to establish the validity of the subcategories chosen.

Differentiation of Acute from Chronic

For both criminology and psychiatry, the distinction between acute and chronic individuals has major research and treatment implications. Acute and chronic schizophrenics have been shown to differ along several dimensions, including family history, time and abruptness of onset, prior events, symptom severity, subtype diagnosis, response to medication, some physical traits, and prognosis. Indeed, these supplemental data are often used in conjunction with traditional symptoms to separate acute from chronic patients. This additional information facilitates clinical decisionmaking. Furthermore, knowledge about differences in those patients who recover and those who do not may aid in the development of prevention strategies.

Similar potential costs and benefits may derive from separating acute and chronic criminals. The vast majority of delinquents and criminals do not become chronic serious offenders. Those who do seem to become involved in problem behavior much earlier. From both research and treatment perspectives, more of the differences between acute and chronic offenders need to be specified. Being able to predict who is likely to become a chronic offender might permit better intervention efforts.

III. DEVELOPMENT AND THE BIOLOGY OF CRIME

This section reviews the evidence for a biological component to delinquency and crime. During physical maturation, three types of biological factors could conceivably contribute to the subsequent expression of criminal behavior. First, traits that incline toward criminality (e.g., lack of foresight, decreased ability to empathize with a victim, quickness to anger) might be inherited genetically. Evidence supporting a genetic origin to complex behaviors is typically explored using family, twin, and adoption studies, which will be described subsequently. Second, biological contributions to criminality might result from some post-conception intrauterine event. For example, maternal stress, malnutrition, or exposure to drugs might affect the developing fetus in a way that leads to a more aggressive, less easily disciplined individual. The possibility of an interactive process combining a genetic predisposition with pre- or post-natal environmental stressors is described. Third, following birth, a maturing child might experience some physical event (e.g., trauma) that would increase the likelihood of becoming delinquent, and the potential effects of such childhood medical problems on delinquency are described.

GENETIC FACTORS

Family Studies

Family studies are based on the observation that genetic disorders concentrate in families. Relatives of an affected person share more of their genes in common than do nonrelatives. Accordingly, to the extent that a disorder is genetically determined, the relatives of an affected person are more likely to have inherited the genes responsible than are persons in the general population. This method compares the rate of a disorder among close relatives of an affected individual with the rate of the disorder in the general population. If the rate of the disorder among relatives is significantly higher than that among nonrelatives, a genetic contribution is postulated. For example, the prevalence rate of schizophrenia in the general population is about 1 percent; however, among first-degree relatives of a schizophrenic, the average risk increases to about 10 percent.

Data from family studies, though easily obtained, are difficult to interpret because the method cannot distinguish familial resemblance arising from shared genes from commonalities resulting from environmental similarities.

It is well documented that antisocial behavior clusters in families. However, antisocial individuals tend to come from families characterized by disruption and alcoholism as well. Offspring of antisocial parents are more likely to experience lack of supervision, lack of financial support, and broken homes, which they, in turn, tend to inflict on their children (Rutter and Madge, 1976). Nonetheless, these and similar findings are not very informative about the heritability of criminality because they confound genetic background with rearing practices.

Twin Studies

Twin and adoption studies permit a closer look at genetic influences. The twin method may be used to separate environmental and genetic contributions to behavior in a way that family studies cannot. This method takes advantage of the fact that there are two types of twins: identical and fraternal. Identical twins derive from a single fertilized egg, while fraternal twins results from two distinct fertilizations. Therefore, identical twins are genetically identical, whereas fraternal twins are no more genetically alike than are ordinary siblings. Assuming that a disorder is genetically determined, there should be much higher rates of agreement (concordance rates) among pairs of identical twins than among pairs of fraternal twins. For example, nearly a dozen major schizophrenia studies have been conducted worldwide, and all show higher rates of agreement between identical twin pairs than between fraternal twins.

Problems inherent in the twin study design include (1) sampling techniques, (2) differentiation of fraternal from identical twins, and (3) the validity of the assumption that identical and fraternal twin pairs experience equivalent environments. Sampling issues were more of a problem in early twin studies, where it appeared that twin pairs were selected based on having had the trait in question. More recent twin registers enable investigators to sample randomly with less biased results.

In the past, researchers would often subjectively differentiate identical from fraternal twins, possibly biasing the results. Today highly accurate blood analyses are performed comparing genetic markers in pairs. If any of these markers differ, the twins must be fraternal.

Finally, the equal environments assumption implicit in the twin method needs examining. If this assumption is not met (e.g., if identical twins are treated more similarly than fraternal twins), then a finding of greater behavioral similarity between identical twins might result in part from greater environmental similarity and not solely from increased genetic similarity. Studies have begun to address this issue, and the initial data seem to support the reasonableness of the equal environments assumption (Plomin, De Fries, and McClearn, 1980).

Most twin studies focus on antisocial behavior, delinquency, and criminality without distinguishing among these constructs (for a review see Christiansen, 1977b). Very early studies found extremely high concordance rates for identical twins compared with fraternal twins; however, these studies were plagued by methodological flaws. Averaging the findings of eight early twin studies using 283 identical and fraternal pairs resulted in an identical twin concordance rate more than twice that of the fraternal pairs (67.1 percent vs. 31 percent).

A more recent large-scale twin study with careful methods included 3,586 twin pairs (Christiansen, 1977a). In support of the earlier work, pairwise concordance rates were 35 percent for identical pairs and 12 percent for fraternal pairs.

Adoption Studies

Most compelling are adoption studies that untangle the influences of heredity and rearing environment. Adoption studies typically involve comparing incidence rates for two types of adopted children: from affected biological parents and from unaffected biological parents (controls). If rates of the disorder are significantly higher in the adopted-away offspring of affected parents, genetic factors may contribute to the development of the disorder.

Estimations of genetic contributions to behavior are least confounded using this design, but there are still difficulties. For example, variation in the age at adoption may confound the data. In addition, adoption agencies tend to place adoptees selectively; thus the offspring of tall biological parents tend to be placed with tall foster parents. This kind of matching is harder to do with behavioral traits, of course.[1] In addition, control children whose parents were willing to give them up may not be a representative or random sample. For example, parents who give their children up for adoption may include persons with a higher rate of psychiatric disorders than parents in the general population (Horn et al., 1975). Similarly, their foster parents may differ from the general population.

The potential importance of genetic influences in antisocial behavior were foreshadowed by Robins (1966). She examined the role of parental deviance in the development of antisocial behavior using a large sample (n = 524) of delinquent children. A 30-year followup indicated that having a sociopathic father was a significant predictor of subsequent antisocial behavior. However, the development of such antisocial tendencies was unrelated to whether the child had actually been reared with the father in the home. Thus the likelihood of becoming an antisocial adult did not differ between children whose sociopathic fathers had left the family before the child was two and children whose sociopathic fathers were present at least intermittently. Of course, the fact that women who marry sociopathic men were more likely to have some type of disorder themselves was probably a contributing factor in this and the adoption studies discussed below.

Cadoret (1978) and Crowe (1972 and 1974) carried out a series of adoption studies demonstrating that, when children of criminals or those with antisocial personality were adopted early in life by nonrelatives, they were more likely to reveal antisocial and criminal behavior as adults than were control children.

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[1] There is also a potential labeling effect so that adoptive parents knowing the child's background may unconsciously promote delinquent behavior.

Crowe studied adopted-away children of female criminals and followed these high risk children along with adopted controls into adulthood. He reported a significantly higher rate of antisocial behavior in the adopted children of criminals. However, adoptees diagnosed as antisocial in Crowe's study did not have serious records (Bohman et al., 1982); they had committed mostly petty property crimes. Of the sample of 37 children of criminal mothers, only eight had criminal convictions. There were no crimes of violence.

Other problems in Crowe's study included: variable length of time spent in foster care before adoption; variable age at followup (ranging from 18 to 45 years) meant that some criminal behavior might not have emerged; knowledge of adoptee's criminal background by the adopting family, with possible self-fulfilling prophecy, and the diagnosticians' lack of blindness to children's high-risk or control status.

Cadoret, Cunningham, and Loftus (1976) found a significant correlation between antisocial diagnoses in biologic parent and subsequent antisocial behavior among their adopted-away offspring. Regression analyses indicated an environmental explanation for some of the variance in offspring outcome. The investigators found potential environmental contributors in the form of psychiatric problems in the adoptive home. In fact, the adoptive parents' psychiatric problems explained as much of the variance in offspring outcome as did biologic background, although both predicted very little. Cadoret asserts that the small predictive power of the biologic factors might explain why some studies failed to find evidence for inheritance of criminal tendencies in the adopted-away offspring of criminals (Bohman 1971, 1972; Cadoret, Cunningham, and Loftus 1976). Many as yet unmeasured factors may overwhelm the biological component.

Bohman et al. (1982) studied genetic and environmental risk factors for criminality in 862 adopted-away Swedes. They were especially interested in the heritability of different sorts of crime--for example, violent acts vs. petty offenses. They reported that petty crime was, in fact, more likely among the biological offspring of petty criminals. They also found that unstable adoptive placement procedures were associated with increased risk for petty criminality.

Finally, Mednick, Gabrielli, and Hutchins (1984) reported the results of a large scale adoption study using subjects from the Danish Adoption Register. The study examined 14,427 adoptions and found that sons of criminal parents (those convicted of criminal code violations) had a significantly elevated probability of becoming criminal compared with adoptees with no criminal background (20 percent vs. 13.5 percent). However, even among this high risk group, only 25 percent had received a court conviction. Furthermore, ability to predict adoptee criminality from biological parents' criminality held only for property crime and not for violent crime.

In sum, the genetic studies described do seem to point to a heritable component in the expression of criminal behavior *in some cases*. However, given the methodological problems described, these data require further confirmation. In addition, the findings indicate the paramount importance of environmental influences. If identical twins display concordance rates of only 35 percent for criminality, sociocultural forces must strongly predominate.

PRE- AND PERINATAL FACTORS

An adverse intrauterine environment may have enduring dire consequences for the child. Over the years investigators have suggested many factors that might result in pregnancy and birth complications. These include malnutrition, drug use, lack of prenatal care, low socioeconomic status (SES), and prolonged psychological stress (Grimm, 1961; James 1969; Bragonier, Cushner, and Hobel, in press). Many of these factors are correlated. Brain damage and mental retardation are often strongly associated with low birth weight and prematurity, which are, in turn, frequently associated with low SES, minority group status and lack of access to prenatal care (Bragonier, Cushner, and Hobel, in press).

Stress

Maternal stress is thought to be a significant cause of perinatal complications by, for example, increasing the risk of premature birth. Thus, Davids and DeVault (1962) reported on third-trimester anxiety levels of a sample of women. Following delivery, the women were divided into normal and abnormal groups based on the presence or absence of pregnancy and birth complications. Anxiety levels were then checked to see if the two groups differed; women in the abnormal group were found to be much more anxious during pregnancy. Similarly, Gorsuch and Key (1974) reported that anxiety in the first trimester and life stress in the second and third trimesters were associated with abnormalities of pregnancy.

Malnutrition

The effects of malnutrition on the developing fetus or infant may be grave. Both human and animal studies show that prenatal or postnatal malnutrition may jeopardize brain development. It has been estimated that nearly 60 percent of all pregnant women with incomes below the poverty level consume fewer calories than are necessary for normal intrauterine development (Newberger, Newberger, and Richmond, 1976).

The effects of malnutrition differ depending on *when* they occur during the pregnancy. Early fetal growth occurs by an increase in numbers of body cells, while later growth depends more on enlargement of pre-existing cells. Malnutrition can therefore interfere with growth by disrupting either cell division or cell growth. In early pregnancy, malnutrition will result in organs with a permanently reduced number of cells; later in pregnancy, it will prevent cell growth but may be reversible with improved nutrition. Early malnutrition has been shown to produce a 60 percent deficit in the total number of brain cells (Winick, 1971). Furthermore, malnutrition during the first few months after birth may cause a decrease in the normal number of brain cells. Prolonged malnutrition, particularly before age five, may permanently affect body growth, learning ability, and rate of maturation.

Low Birth Weight

There are major differences in the incidence of low-birth-weight (LBW) babies in the United States by both race and geographic location. For example, blacks in general (13.7 percent) and urban blacks in particular (14.0 percent) had a significantly higher incidence of LBW offspring than the 1974 national average (7.4 percent) (Chase, 1976).

Personal and socioeconomic factors that increase the likelihood of having either a premature or a growth-retarded infant are well documented. In a background paper prepared by the U.S. Department of Health and Human Services for the Select Panel on the Promotion of Child Health, Kessel, Rooks, and Cushner (1981) describe those woman most likely to deliver a LBW infant: under 18 or over 35 years old; unmarried; black; under-educated; with previous pregnancy losses, inadequate prenatal care, and short inter-pregnancy intervals.

Newton et al. (1979) interviewed pregnant women about life events known to cause psychological stress. They found a significant inverse relationship between the number of stress events per pregnancy and SES; women of low SES reported twice as many stressful events as those of higher SES. This observation suggests that low SES contributes to LBW risk.

The long-term consequences of LBW vary considerably from chronic mental and physical handicaps to subtle learning disabilities to no detectable consequences. Pasamanick and Knobloch (1964) found that cerebral palsy, epilepsy, mental retardation, behavior disorders and learning disabilities were associated with prematurity and complications of pregnancy.

Harmeling and Jones (1968) reported a positive association between birth weight and academic performance. They compared the birth weights of three groups of high school students of similar socioeconomic status and found high school dropouts had the lowest birth weights, slow learners were intermediate, and normal children were the heaviest at birth.

Delinquency

Inadequate nutrition during periods of rapid brain development, such as the first few months of life, can lead to long-term problems (Cravioto and Delicardie, 1970; Winick, Meyer, and Harris, 1975). These investigators reported, for example, that poor nutrition in infancy was associated with poor performance in school and deviant behavior in adulthood.

Others have proposed that specific dietary deficiencies are linked to delinquent behavior. Hypoglycemia (Yaryura-Tobias, 1978), vitamin B6 deficiency (Cott, 1978) and iron-deficiency anemia (Cantwell, 1974) have been identified, among others, as potential contributing factors. However, there has been no conclusive demonstration of a causal connection between malnutrition and delinquency (see Pollit, 1981, for a review).

To assess the effect of perinatal factors in the development of future criminality, Mednick and others studied a Danish birth cohort longitudinally. Birth records of a cohort (n = 9,125) born between 1959 and 1961 were examined and delinquency was ascertained in 1978. Although future property offenders experienced inferior conditions during gestation, their physical and neurological status at birth and throughout the first year of life surpassed that of the nondelinquents. In fact, the more offenses an adolescent had committed, the better was his perinatal and one-year status.

Perinatal circumstances were different for future *violent* delinquents. Like property offenders, they experienced impoverished conditions prenatally, but at one year of age, future violent offenders had a significantly worse physical and neurological status. These deficits are postulated to be the result of pregnancy disturbances rather than delivery complications (Mednick and Gabrielli, 1983). The authors point out that, barring severe oxygen deficiency or birth-related brain damage (e.g., forceps), infants typically recover from birth complications, but the prognosis is not good for embryological disruption. However, developmental disruption during gestation may not lead to conspicuous signs at birth. For example, so-called minor physical anomalies (Waldrop et al., 1978) present at birth (such as low-set ears or a wide gap between first and second toes), are reportedly good predictors of hyperactivity in toddlers and may reflect underlying central nervous system abnormalities. (Because hyperactivity in children has been linked with subsequent antisocial behavior, some investigators believe that these minor physical problems may be associated with delinquency.) Mednick and Gabrielli (1983) conclude that these data increase the likelihood that violence is physically determined in some cases.

Lewis and Shanok (1979) also investigated the medical histories of delinquents and found an association between perinatal problems and violent behavior. Comparing incarcerated and nonincarcerated delinquents, they found that more seriously delinquent children were more likely to have experienced perinatal difficulty and that extremely violent children were most likely of all to have suffered complications. They concluded that perinatal problems were not an important medical factor in the histories of ordinary delinquent children (shoplifters, runaways) but were fairly characteristic of children who become the dangerous chronic offenders (Lewis, personal communication).

In sum, many investigators have found a connection between perinatal problems and delinquency. However, without more detailed evidence, it is impossible to infer causality between pregnancy and birth complications and delinquency. In fact there are likely to be many intervening variables. For example, Klaus and Kennell (1976) report that premature infants are more likely to be abused children later on, possibly because of the prolonged separation of mother and infant and the failure to establish adequate bonding.

CHILDHOOD FACTORS

The connection between adverse medical history and juvenile delinquency is under debate. Some investigators insist that the medical histories of delinquents are no worse than those of the general adolescent population, while others assert that they are.

Unlike genetic predispositions, which are associated with engaging in petty and property crimes, factors that appear in later childhood are correlated with engaging in severe criminal (violent) behavior. For clarity of presentation, three types of factors may be recognized.

These include (1) physiological impairments of the central nervous system, (2) neuropsychiatric disorders, and (3) other medical difficulties (e.g., nutritional deprivation or accidents). Obviously in children these factors may overlap and interrelate. For example, physiological impairment is often secondary to nutritional deprivation.

Central Nervous System Trauma and Delinquency

Evidence has been accumulating linking central nervous system trauma and adverse behavioral changes. Dillon and Leopold (1961) studied 50 children with head injuries. They reported that most of these children exhibited personality changes following the injury, including antisocial and aggressive behavior. Moreover, anticonvulsive medication regimes improved their behavior, lending further support to the postulated link.

Several other investigators have found that childhood head injuries often precede delinquency. Scott (1975) concluded that brain damage was directly involved in producing crime when adverse social and intrafamilial conditions were present. In other words, physically vulnerable children appear more susceptible than their neurologically intact peers to antisocial influences around them. In addition, Lewis and Shanok (1977, 1979) examined the physical histories of delinquents and reported more injuries, accidents, and illnesses among predelinquents than among nondelinquents. For example, a recent examination of the hospital records of 20 incarcerated adolescent males found that this group had indeed experienced a high prevalence of adverse medical events: 90 percent had major accidents, 85 percent experienced severe head injuries, 75 percent were physically abused, and 50 percent had perinatal difficulties (Lewis et al., 1982). The small sample notwithstanding, the proportions are striking. These medical problems tended to be widely overlooked by the attending physicians perhaps because of the subtle nature of these problems.

There is also some evidence of a positive association between the degree of physical trauma experienced in childhood and the severity of delinquency. Lewis et al. (1981) compared nonviolent and violent delinquents (n = 97) in an institutional setting. They reported that the nonviolent group had fewer psychiatric symptoms than did the violent group. For example, more violent children had paranoid symptoms such as hallucinations (75 percent vs. 0 percent). The nonviolent group was also more neurologically intact than the violent group.

Epilepsy. Another major physiological impairment associated with criminality is psychomotor epilepsy. This type of epilepsy results from seizures in a part of the brain implicated in the mediation of fighting and aggressive behavior (Ervin, 1975; Lewis et al., 1981).

Unfortunately, psychomotor epilepsy is difficult to diagnose in children and is therefore frequently overlooked in delinquents. Such diagnostic difficulties are best circumvented by using nontraditional symptoms (such as transient loss of consciousness) rather than EEG (brain waves) to recognize the disorder. One study (Lewis, 1976; Lewis and Balla, 1976) of 285 delinquent children who were referred to a court clinic for diagnosis revealed 18 children with symptoms of epilepsy. This rate, 6.3 percent, far exceeds the rate of *all* types of epilepsy in the general population, which is about 0.4 percent (Gold, 1974). Of these 18 epileptics, 16 (89 percent) had histories of early school behavior problems (e.g., fighting), and 14 (78 percent) had physically assaulted others. This study strongly supported an association between psychomotor epilepsy and violence.

Another study examined 97 delinquent boys who were in a correctional school (Lewis et al., 1981; Lewis et al., 1982). Of these delinquents, 78 had at least one sign or symptom of temporal lobe epilepsy and 25 had four or more signs. In addition, 18 of the 97 subjects had clear EEG evidence of epilepsy; at least 11 of these had committed violent acts during seizures, although all subjects had also been violent at other times.

Neuropsychiatric Disorders and Delinquency. The existence of a relationship between psychosis and delinquency was probably first suggested by Healy (1920), who asserted that, in 455 of 823 delinquent children, "mental abnormalities" were the principal factor contributing to their behavioral problems. Subsequently, more sophisticated investigators such as Bender (1959), Mednick and Schulsinger (1968), and Kaufman et al. (1963) have reported connections between psychosis and juvenile delinquency.

Lewis et al. (1983, 1981, 1979) have repeatedly observed a strong association between psychiatric symptoms and violent behavior in children. They report that 21 of 55 children admitted to a children's psychiatric service were homicidally aggressive. Moreover, adolescents sent to psychiatric hospitals were no less violent than those typically sent to correctional schools. Adolescents who had witnessed or received severe physical abuse were particularly violent. Another, possibly related contributing factor was having one or two psychotic parents.

Hyperactivity. Formerly called hyperactive child syndrome, this second type of neuropsychiatric disorder is now known as attention deficit disorder with hyperactivity (ADDH). It is a common problem affecting as many as 5-10 percent of school-age children (Alpert et al., 1981). Essential features of the disorder include short attention span and hyperactivity. Onset is early, typically beginning by the age of three, and is ten times more common in boys than girls. Associated features include negativism, bullying, and lack of response to discipline (Diagnostic and Statistical Manual III, 1980).

A growing body of literature links ADDH with delinquent, antisocial behavior in childhood, adolescence, and adulthood (D. Cantwell, 1978). Evidence for the connection between ADDH and antisocial behavior includes childhood histories of adults with antisocial disorder and prospective follow-up studies of hyperactive children. For example, Huessy, Metoyer, and Townsend (1974) reported on 84 hyperkinetic children, 9 to 24 years of age, who had been followed from 8 to 10 years. They found this group of hyperkinetic children were five times as likely as those in the general population to have dropped out of school and 20 times as likely to be institutionalized in a facility for delinquent youths.

Family studies provide additional evidence for a connection among ADDH children, delinquent adolescents, and antisocial adults. D. Cantwell (1978) compared the parents of 50 hyperactive children with parents of 50 controls and found the former had significantly higher rates of sociopathy, alcoholism, and hysteria.

Although the mechanisms responsible for the connection between ADDH and antisocial behavior are not completely understood, suggestive findings are emerging. For example, hyperactive children have been reported to have increases in brainwave abnormalities similar to those observed in sociopathic adults. These data have led to the suggestion that both groups are characterized by a low level of nervous system arousal (D. Cantwell, 1978).

Finally, treatment studies imply a connection between ADDH and antisocial behavior. The effectiveness of stimulant medication in the treatment of hyperactivity is well known. Lesser-known improvements have been achieved among antisocial delinquents with stimulants. For example, Maletzky (1974) reported that 14 delinquents treated with amphetamine had a significant positive response compared with those given a placebo.

General Medical Problems and Delinquency

The third type of medical difficulty associated with delinquency is more general. The long-held view that delinquents are in no worse health than the general population seems to be dissipating. For example, Lewis and Shanok (1977) compared a nonincarcerated delinquent group of 109 children with a group of nondelinquents matched for age, sex, race, and economic circumstances. Overall, the delinquents had more serious medical histories than did controls but did not differ in perinatal problems. They had more accidents (especially head and face trauma) and illnesses than controls. These differences appeared by age 4 and were particularly pronounced between ages 14 and 16.

In a subsequent study, Lewis, Shanok, and Pincus (1981) compared incarcerated and nonincarcerated delinquents. Violence was at least twice as common in incarcerated subjects. Head and face injuries, child abuse, perinatal problems, and psychiatric symptoms were more frequent in incarcerated delinquents. They further compared a subset of the incarcerated delinquents who committed particularly violent offenses and other incarcerated delinquents. The particularly violent group had more accidents, injuries, perinatal problems, physical abuse, and hospital ward admissions. The investigators note that their data show a correspondence between physical trauma received and increasing aggressiveness. Nondelinquent children had the best medical histories, nonincarcerated delinquents the next best, incarcerated boys had poor medical histories, and extremely violent incarcerated boys the worst of all.

In conclusion, data linking medical problems to juvenile delinquency are convincing, but more evidence is needed. Some medical conditions in adults have been demonstrated as physical causes of criminal behavior. For example, Charles Whitman, who gunned down several people and was later killed, was found to have a massive brain tumor. Because there is a known association between abusive parents and delinquent offspring, it is likely that many delinquent children have been seriously physically injured, and such injuries might constitute a physical influence on delinquency.

IV. BIOLOGY AND CRIME IN ADULTS

This section reviews many of the more suggestive findings from biological investigators of criminality in adults. The studies and results included have been replicated more than once. Most of these studies were conducted in prisons, and the primary focus was a criminal type formerly known as a sociopath or psychopath; these individuals are now referred to as antisocial. Antisocial individuals have been referred to as follows:

> The essential feature is a personality disorder in which there are a history of continuous and chronic antisocial behavior in which the rights of others are violated, persistence into adult life of a pattern of antisocial behavior that began before the age of 15, and failure to sustain good job performance over a period of several years. . . .
>
> Lying, stealing, fighting, truancy, and resisting authority are typical early childhood signs. In adolescence, unusually early or aggressive sexual behavior, excessive drinking, and use of illicit drugs are frequent. In adulthood, these kinds of behavior continue, with the addition of inability to sustain consistent work performance or to function as a responsible parent and failure to accept social norms with respect to lawful behavior. After age 30 the more flagrant aspects may diminish, particularly sexual promiscuity, fighting, criminality, and vagrancy. . . .
>
> Predisposing factors are attention deficit disorder and conduct disorder (hyperactivity) during prepuberty. The absence of parental discipline apparently increases the likelihood that conduct disorder will develop into antisocial personality disorder. Other predisposing factors include extreme poverty, removal from the home, and growing up without parental figures of both sexes. (*Diagnostic and Statistical Manual* III, 1980, p. 317.)

ENDOCRINOLOGY

This section briefly reviews the relationships between hormones and criminal behavior. These data are derived almost exclusively from studies of testosterone; other hormones that might relate to criminality (e.g., cortisol) have not been systematically investigated. Hormonal activity may influence criminal (or other) behavior in at least four ways. First, hormones such as testosterone can directly affect the brain by binding to specific receptors. Areas of the brain that are rich in testosterone receptors include regions that have been implicated in the mediation of rage. By binding to receptors in these areas, testosterone might alter nerve cell activity and induce increased aggressive or criminal behavior.

Second, testosterone and other hormones might indirectly alter brain function by affecting enzyme activity. For example, testosterone concentration in monkeys is inversely related to monoamine oxidase (MAO) activity. MAO is an enzyme that promotes the degradation of some chemical messengers in the brain. Consequently, alterations in MAO activity may modify brain function. Alterations in these chemical messengers have been consistently implicated in the mediation of aggression in animals and in schizophrenia and other psychopathology in humans. In addition, testosterone may affect widespread physiological processes such as metabolic rate or availability of blood sugar. Changes in these processes might in turn alter brain function, thereby increasing the likelihood of engaging in criminal or violent behavior.

Third, testosterone promotes growth in peripheral target tissues such as muscles, bones, and secondary sex characteristics. For this reason, males, with increased circulating testosterone, tend to be bigger in stature than females. These alterations, particularly enhanced muscle mass, may promote the likelihood of engaging in criminal behavior, particularly during adolescence.

Fourth, testosterone itself may be altered by engaging in violent or criminal behavior. In monkeys, engaging in sexual or successful aggressive behavior results in an increase in circulating testosterone. Such changes in testosterone may be reinforcing. Whether similar processes exist in humans has yet to be demonstrated.

Testosterone may influence behavior not only in adulthood, but also during development. In rodents, monkeys, and humans, the presence of testosterone (or related androgens) during a critical prenatal period results in a "masculine" nervous system. In humans and monkeys, this critical period probably occurs early in pregnancy. Experimental studies in monkeys have shown that, if females are exposed to testosterone prenatally, they exhibit many "male-like" behavioral patterns. Their play is rougher, and they are more active and aggressive. Similarly, human females inadvertently exposed to high levels of a testosterone-like compound *in utero* exhibit analogous changes in play and aggressive behavior.

In normal human males, testosterone declines after birth and remains low until puberty. At this time, testosterone concentrations increase dramatically, usually rising to adult levels between 12 and 20 years of age. During this period of rapid rises in testosterone, males seem to be particularly prone to engage in delinquent behavior (Hays, 1981). Thus the physiological effects of testosterone in adulthood, its role in the development of the nervous system, and the rapid rise in testosterone concentration during puberty all suggest that it may be linked to male antisocial or criminal behavior.

Several investigators have focused on the relationship between testosterone levels and aggressive behavior. For example, Persky, Smith, amd Basu (1971) examined the association between testosterone concentration and hostility in three groups of men. Among middle-aged men (both psychotic and normal) there was no relationship between testosterone and hostility. However, in young men aged 17 to 28, there was a significant positive correlation. Other investigators have been unable to confirm this finding. For instance, Meyer-Bahlburg et al. (1974) found no difference in testosterone levels between high and low aggression groups of male college students. Similarly, Doering et al. (1974), Monti, Brown, and Corriveau (1977), and Houser (1979) found no relationship between testosterone and hostility in normal men. In contrast, a small group of hockey players exhibited a positive correlation between testosterone and aggressive responses to threats (as evaluated by coaches and teammates) (Scaramella and Brown, 1978). Thus the relationship between testosterone and aggression in normal men is uncertain.

In prison populations, there does seem to be a stronger association between these measures. Kreuz and Rose (1972) examined testosterone in high- and low-aggression groups of young male prisoners. They found that, although mean testosterone concentration did not correlate with the frequency of fighting in prison or with level of hostility, the prisoners with more violent histories *during adolescence* had higher testosterone concentration than did the others. Kreuz and Rose suggest that, among people predisposed by social factors (e.g., economic considerations) to become criminal, elevated testosterone may place them at greater risk to commit more aggressive crimes during adolescence.

Mattsson et al. (1980) compared testosterone levels in delinquents and normal controls. Overall, the delinquent males had higher concentrations of testosterone. This difference was most pronounced in the earlier stages of puberty but disappeared by the time development was complete. In support of Kreuz and Rose (1972), Mattson and associates concluded that in some individuals, given appropriate social factors (e.g., economic), rapidly increasing and high testosterone levels may lead to increased activity, assertiveness, and aggression.

In summary, there does seem to be a relationship between male aggressiveness and testosterone in prison populations. However, no one has suggested that testosterone is a causal factor in the expression of violent or criminal behavior. Perhaps the most reasonable way to regard the relationship between testosterone and aggression is to view testosterone levels as a reflection of one's assertive orientation (Mattsson, 1981). Some males with high testosterone appear to be prone to respond aggressively and violently in provocative situations. Their testosterone levels may reflect their vulnerability for engaging in violent antisocial behavior, particularly during adolescence (Hays, 1981).

NEUROPHYSIOLOGY

Neurophysiology is the study of the functions and activities of the nervous system. Because the brain operates using electrical impulses, the primary focus of this field is on the electrical phenomena that may reflect nervous system activity. Neurophysiological investigations of criminality have relied almost entirely on surface electroencephalography (EEG), a very indirect index of brain function. EEG data are obtained using recording electrodes placed at various points on the scalp. These electrodes produce tracings that are usually referred to as brain waves.

The relationship between brain cell activity and EEG tracings is not completely understood, but the technique is widely used because it is noninvasive. EEG readings probably reflect the activity of groups of brain cells located in the part of the brain closest to the scalp, the cerebral cortex.

EEG tracings are typically obtained from more than one place on the scalp (corresponding to the four main areas in the brain). Results are thus described in terms of electrode location and the amplitude and frequency of the wave. For example, alpha would have a frequency of 4-13 cycles a minute.

In addition to their noninvasive nature, EEG recordings have two other advantages. First, EEGs taken while a person is resting are fairly constant; they show high *intra*individual stability over long periods of time. Nevertheless, there are known developmental transformations in EEG patterns during childhood and adolescence. The mature pattern is reached at about 19 to 20 years and remains until old age. The second advantage of the EEG is its marked *inter*individual variability.

The EEG also has disadvantages. Various physiological conditions such as changes in blood sugar level and extreme anxiety or fatigue can produce transient changes in the resting EEG. In addition, various drugs may alter EEG patterns. Lack of attention to these potential confounders is a major source of error in these studies (Vogel et al., 1979).

Interpreting EEG tracings can also be problematic. Currently two methods are used. The first, and more prevalent in criminality studies, consists of a qualitative clinical judgment regarding the normality of a tracing. However, the lack of standardization in such EEG evaluations leads to inconsistent findings across studies (Syndulko, 1978). Second, computer averaging of EEGs is being used to provide a quantitative index.

Estimating the prevalence of EEG abnormalities among inmates is a common approach in neurophysiological investigations of criminality. The majority of these studies have used the qualitative technique for interpretation. However, as noted, the reliability of this analytic technique is poor (Mednick and Volavka, 1980), and its use may have resulted in inflated estimates of the prevalence of brain abnormalities in criminals. For example, the criteria for differentiating normal from abnormal brain waves are most variable for slight to moderate deviations from normal, including the moderately slow activity most commonly reported for psychopaths (Syndulko, 1978). Inconsistent results across studies may be due to the universal problems of subject selection and small sample sizes. In addition, experimental control and diagnosis of subjects are often inadequate (Hare and Cox, 1978). Finally, investigators may fail to consider that EEG abnormalities occur in 5 to 20 percent of normal people (Kooi, Tucker, and Marshall, 1978).

There are two principal ways that neurophysiological changes might influence the expression of criminal behavior. First, alterations in brain activity could lead *directly* to behaviors that increase the likelihood of becoming criminal. Any number of brain abnormalities located in regions mediating, for example, aggression, intelligence, or perhaps ability to appraise the costs and benefits of an action could conceivably result in criminality. Brain abnormalities, including tumors, enlarged ventricles, degeneration of tissue, or seizures could produce both an abnormal EEG pattern and undesired behavior. Second, neurophysiological changes might *indirectly* increase the probability of engaging in criminal behavior. This type of influence is permissive in that it does not directly affect behavior but alters mood or perceptions or cognition and in that way contributes to behavioral alterations.

Many EEG studies have reported a high proportion of abnormalities among psychopathic individuals. In fact M. Goldstein (1974) notes that 50 to 60 percent of diagnosed psychopaths have an EEG abnormality. Williams (1969) reported that, among violent criminals, the proportion of subjects having EEG abnormalities (excluding epileptics, mental retardates, and those with head injuries) depended on whether they were single or multiple offenders (12 percent and 57 percent respectively). (As Williams points out, a 12 percent proportion with abnormalities is within normal range.)

Despite methodological problems inherent in many of the older EEG studies, the finding of abnormality and, in particular, excessive slow wave[1] activity among incarcerated criminals is fairly well documented (Mednick and Volavka, 1980). There have been several interpretations of studies reporting increased slow wave activity among criminals. The resemblance of adult psychopathic slow wave patterning and that of normal children led to the suggestion that psychopathy might be associated with a delay in cortical maturation. (The fact that psychopaths often recover late in life supports the notion of brain immaturity as a contributor.) Another possibility is that slow wave activity reflects underlying brain dysfunction. A third possibility is that the excessive slow wave activity in psychopaths reflects reduced nervous system arousal (Mednick and Volavka, 1980) and a tendency to become bored and drowsy during routine EEG exams (Hare and Cox, 1978).

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[1] Many investigations report a slowing of the resting EEG, either through a small shift to the lower frequencies in the alpha range, so-called slow alpha, or an increased amount of theta or delta waves.

Two studies have produced data relevant to these competing explanations of the meaning of excess slow wave activity in criminals (Peterson et al., 1982; Mednick et al., 1981). Both used prospective longitudinal designs to determine whether increased slow wave activity was a cause or a consequence of criminal behavior.

For example, Mednick et al. (1981) looked at EEG tracings in 265 boys aged 10 to 13 years as possible predictors of delinquency up to six years later. They reported that slow alpha waves predicted later delinquency, in particular thievery, while excess delta and theta activity, characteristic of young childrens' EEGs, did not. Slow alpha waves are characteristic of drowsy, low arousal states. They concluded that the EEG findings supported the decreased autonomic nervous system arousal theory and did not support the cortical immaturity hypothesis.

The idea that arousal level or responsivity of the nervous system is altered in some criminals is supported by other lines of evidence, including psychophysiological (e.g., skin conductance, pulse rate). The connection between hyperactivity in children (a condition characterized by decreased arousal) and subsequent antisocial behavior has already been noted. Mednick (1977) detailed how underarousal might interfere with learning law abidance and asserted that antisocial behavior results from slow fear reduction during avoidance learning. Normally, a child learns to inhibit tendencies by fearfully recalling previous punishment. Fear thus causes a child to inhibit an aggressive act, which results in reinforcement through fear reduction. In the case where the fear reduction response differs in terms of speed, size, and quality, law abidance may not be learned effectively.

In conclusion, research efforts have been directed at the problem of EEG abnormalities in criminals for nearly 40 years. Whatever inconsistency remains in the overall picture is due to lack of methodological rigor in selecting subjects, defining experimental conditions including control groups, and interpreting results. However, it seems that a subset of criminals do show an excessive incidence of EEG abnormalities. Elucidation of the importance of this information in terms of treatment awaits additional research defining and integrating the psychological, sociological, and other physical characteristics of this subgroup.

PSYCHOPHYSIOLOGY

Psychophysiology involves the indirect measurement of nervous system activity primarily by noting the activity of muscles, sweat glands, and cardiovascular system. This approach is used to examine interrelationships among physiological systems and behavioral and psychological states.

Psychophysiological concepts such as arousal, attention, habituation, and information processing are often difficult variables to operationalize, and the data generated using these concepts may not be easy to interpret. Many of the variables measured (e.g., pulse rate, blood pressure, sweat gland activity) are state-dependent phenomena; that is, they reflect more of the immediate circumstance than of an intrinsic stable trait of the subject. Therefore, psychophysiologic data are likely to vary over time and have many artifacts. In addition, various measures purported to reflect a single concept (e.g. arousal) may have low correlations with each other; hence, heart rate may be fast, respiration slow, and skin conductance normal in the same subject. This makes research and interpretation problematic, even using very basic constructs. Despite these problems, psychophysiological research may uncover group differences between some criminals and normals and aid in developing preventive strategies.

Psychophysiological measures are best regarded as correlates rather than causes of crime. Neurophysiological factors may directly influence behavior, but heart rate, skin conductance patterns, or other psychophysiological parameters probably reflect an altered set point, which might cause an individual to filter information differently, respond to sensory clues differently, or produce a different level of some hormone. Therefore, although psychophysiological measures might aid in identifying individuals at risk for crime, they should not be regarded as direct causal agents.

Baseline Galvanic Skin Response

Galvanic (electrical) skin response (GSR) is widely used researching autonomic nervous system (ANS) functioning among criminals. The procedure is easily administered, noninvasive, and reliable (Mednick et al., 1982). The technique works by leaking a small amount of electrical current across the subject's hands; passage of the current is proportional to the palm's sweat gland activity, which is thought to correspond to degree of emotional arousal. Hence, individuals who are often aroused and fearful tend to have clammy hands, in contrast to unemotional subjects who have low skin conductance and typically dry hands. Several types of measurements are collected using this technique; these will be described in turn.

Baseline galvanic skin response is simply the continuous recording of GSR in a resting condition. Most studies begin by collecting initial baseline information to (1) allow the subject time to get used to the laboratory setting and (2) obtain undisturbed readings to permit comparison with challenged states.

Loeb and Mednick (1977) obtained baseline GSR data as part of a study on the antecedents of delinquency. Using a Danish cohort of 107 boys, they compared the seven *subsequent* delinquents with a matched control group and found a nonsignificant trend toward lower GSR basal values in the delinquents. These boys had committed "mildly" delinquent acts.

Some studies have found that uninterrupted skin conductance of psychopathic inmates is lower than that of other inmates during the initial resting period of an experiment. As these differences are not always significant but evidence a trend, Hare (1978) combined the results of eight experiments, which yielded a highly significant difference between psychopathic and nonpsychopathic inmates.

There are a several possible explanations for the observation that psychopathic inmates have a lower resting skin conductance than nonpsychopathic inmates, at least in a lab setting. Some investigators point to this as biological validation of the clinical description of psychopathy. They assert that these data indicate that autonomic functioning is set lower in psychopaths, and this decreased arousal results in a lack of fear and anxiety under certain circumstances. However, other interpretations of a low resting GSR are possible also. For example, low resting skin conductance might be related to motivational factors rather than to emotional ones (Hare and Cox, 1978).

Challenged Galvanic Skin Response

GSR following specific stimuli may be a more relevant measure for psychopathy than baseline GSR. Following baseline recording, subjects are exposed to a stimulus. Although weak stimuli do not result in very different skin conductance responses, when stronger or aversive stimuli are presented, psychopaths exhibit diminished skin conductance amplitude compared with nonpsychopaths (Hare, 1978).

Galvanic Skin Response Recovery

Attention has been directed to another component of the GSR, the recovery limb of the skin conductance response tracing. This is a measure of how quickly the GSR returns to basal levels after exposure to a stimulus. The method was applied to a cohort (n = 107) of prospective delinquents, who had significantly slower GSR recovery rates than controls (Loeb and Mednick, 1977).

Several investigators have reported a tendency toward slow GSR recovery rates among psychopaths. For example, Hare (1978) noted that incarcerated psychopaths show abnormally slow recovery to baseline levels in response to a loud noise.

Of all the skin conductance data discussed thus far, evidence is strongest in support of slow GSR recovery rates in connection with criminality. In fact, Mednick et al. (1982) suggest that slow autonomic nervous system recovery may result in the development of antisocial behavior.

Anticipatory Galvanic Skin Response

Because clinical descriptions of psychopathy include lack of foresight, psychophysiologists have attempted to measure this trait in the laboratory. Lykken (1957) first examined the relationship of anxiety to psychopathy. He hypothesized that psychopaths are deficient in avoidance learning where such learning is mediated by anxiety. In testing this hypothesis, Lykken found that psychopathic subjects were virtually incapable of learning to avoid a painful stimulus, while normal subjects learned readily.

Lykken's original work has been replicated many times. Typically, psychopathic subjects are given a warning signal followed by an aversive stimulus such as an electric shock. Most studies report diminished GSR responsivity in anticipation of the shock (see Hare, 1978; Mednick et al., 1982). For example, Hare and Cox (1978) told psychopathic inmates that they would hear an excruciatingly loud noise following a 12-second delay. Compared with nonpsychopathic controls, the psychopathic anticipatory response began later and was weaker in magnitude.

Because the delayed stimuli in these experiments are painful and aversive, these findings are usually interpreted as support for a psychopathic inability to feel apprehension. In turn, this apparent inability to experience anticipatory fear is used to account for the psychopath's failure to learn from punishment (e.g., see Mednick et al., 1982).

It follows from these reports of very reduced reactions to painful shocks that psychopathic prisoners may not learn from punishment. Some research has reported that this is so. Using electric shocks as "punishment," Lykken (1957) reported that, when psychopathic and nonpsychopathic individuals set out to learn a maze, the two groups learn the task at virtually identical rates, but the control group quickly learns to avoid situations that result in electric shock. Psychopathic subjects, however, did not learn to avoid the shocks.[2]

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[2] Psychopathic subjects show no deficit in learning from *positive* reinforcement, although such learning is presumably mediated by many of the same physiological mechanisms.

A common explanation of the psychopath's inability to learn from punishment is simply that he is at such a low level of arousal. This is because anxiety reduction is said to be an essential feature in learning to avoid pain; these underaroused individuals lack anxiety, hence cannot learn to avoid pain. In support of this view, Schacter (1971) demonstrated that psychopathic inmates, in contrast to normals, show marked improvement in learning when injected with adrenalin (which enhances arousal). He concluded that psychopaths are more sensitive to adrenalin than normals. Although a few other studies aimed at enhancing autonomic nervous system arousal seem to support the hypoarousal explanation, Hare (1973) reports no differential responsivity to adrenalin in psychopaths compared with nonpsychopathic controls, apart from skin conductance disparities.

Cardiovascular Activity: Heart and Pulse Rate

In laboratory experiments, continuously recorded heart and pulse rate have failed to discriminate psychopathic from nonpsychopathic subjects (Hare and Cox, 1978).

Using a prospective design, Wadsworth (1976) examined anticipatory pulse rate in 10-year-old boys' response to a stressful stimulus--awaiting a school medical exam. Although he found no statistically significant relationship between anticipatory pulse rate of future delinquents and nondelinquents as a whole, there were differences in boys who had committed violent and sexual offenses. The latter exhibited lower than average pulse rate in response to the stress of an impending medical examination, however, boys who were experiencing broken homes also showed this same reduced pulse rate reaction. Therefore, at least one other circumstance--early emotional deprivation--can lead to this cardiovascular response in the absence of delinquency.

Heart Rate Responsivity

Data on cardiovascular responses of psychopaths to unannounced stimuli have been equivocal. Hare (1968) reported that psychopathic prisoners had smaller decreases in heart rate when exposed to stimuli than did other inmates. Because heart rate deceleration is part of orienting to a stimulus, these smaller cardiac responses point to psychopathic underarousal. However, later research using louder stimuli failed to find significant heart rate response differences between psychopathics and controls (Hare, 1978).

Cardiovascular activity differs most between psychopaths and nonpsychopaths in anticipation of a negative stimulus. Thus, while awaiting delivery of a painful or aversive stimulus, psychopathic prisoners show substantially greater increases in heart rate than do control inmates (Hare and Cox, 1978). Interpreting these cardiovascular data must take into account GSR findings as well. A psychopathic profile with large increases in heart rate and small increases in skin conductance seem contradictory. Anticipatory heart rate increases appear to indicate fear of a threatening input and anticipatory skin conductance responses indicated a lack of fear to impending noxious inputs. Hare (1978) interprets these data in a more concordant (if not post hoc) fashion by proposing that cardiac acceleration has the paradoxical effect of decreasing environmental stimulation. Hare suggests that this increase in heart rate may be part of a defensive reaction to cope with the impending aversive stimulus.

In general, the psychophysiologic data point to some physical differences in some criminals. Currently the evidence from limited studies of delinquents and antisocial criminals suggests that at least some of these people may have reduced autonomic nervous system arousal. These reductions may precede the onset of delinquency. Because of present inconsistencies in psychophysiological findings, it may be premature to use this approach to attempt to identify individuals at risk as criminals. A more profitable approach might be to examine fairly homogeneous subgroups of criminals and see whether and to what extent they differ from the general population. These data might aid in further specifying what other abnormalities (e.g., hormonal) may characterize some criminals.

V. CONCLUSIONS, IMPLICATIONS, AND RECOMMENDATIONS

The overall research on the biological basis of criminal behavior is inconclusive. Data currently consist of a series of weak correlations between criminality and a nearly random assortment of biological variables. These data are derived largely from studies of prisoners. In these settings, some variables (e.g., diet) are well controlled, but many are not. At least five factors need to be considered. First, studies are biased toward criminals who were caught and convicted. This may skew the population with respect to intelligence, socioeconomic status, or some other attribute. Second, the choice of appropriate control groups is problematic. Third, the tedium of institutionalized life may affect physiologic responsivity in some unknown way. Fourth, participation in many of these voluntary experiments is unpleasant (e.g., electrical shock is used). This may result in a substantial number of inmates refusing to participate, leading to the selection of a biased group of subjects. Fifth, psychopaths may not be an appropriate population in which to identify biologic traits that *predispose* people to become criminals. As a consequence, applying results from these studies to programs designed to identify individuals at risk for delinquency involves a series of questionable extrapolations.

METHODOLOGICAL PROBLEMS

Criminal behavior is antisocial behavior that is forbidden by society. Most people abide by society's rules. Accordingly, a basic problem in understanding crime is explaining why some individuals fail to inhibit their antisocial actions. In studies of how underarousal contributes to this failure to abide by societal rules, investigations have concentrated on the extreme case, the persistent offender or psychopath. These individuals are described as without remorse, guiltless, and unable to learn from punishment. However, the term psychopath is insufficiently precise for scientific purposes. Indeed, most discrepancies among studies probably arise from the lack of consistency in selecting subjects (Hare, 1978).

Rosenthal (1970) cited six studies with prevalence estimates for antisocial behavior ranging from 0.05 percent to 15 percent, a 300-fold difference. In general, prevalence estimates are totally dependent on the strictness of definitional criteria, which may vary greatly. A related problem is that much of the research on psychopathy comes from Scandinavia, the United States, and Europe. Scandinavian definitions of what constitutes antisocial activity are very different from American, making international comparison difficult (Winokur and Crowe, 1975).[1]

A second methodological problem is that many studies of the biology of crime employ nonspecific physiological endpoints that may also be altered in other medical conditions. Nonspecific variables associated with psychopathy as well as other medical disorders include EEG alpha slowing (Volavka, 1977), thought to reflect underarousal, and enlarged ventricles (Mednick, personal communication), reportedly associated with low impulse control.

Moreover, investigators of the biology of crime typically fail to relate different biological levels of organization. Thus researchers report both genetic evidence and, for example, EEG evidence in support of a biological basis for criminality, but the intervening physiological mechanisms are usually not well conceived. There is considerable agreement that (1) failure to respond to negative conditioning is characteristic of psychopathy, and (2) this failure is due to an inability to recognize stimuli that signal impending punishment, but the physiological basis of this defect is still disputed. It has been variously explained in terms of autonomic underarousal (e.g., Mednick and Gabrielli, 1983), deficiency in orienting response (Hare, 1968), high threshold to stimulation (Eysenck, 1970; Quay, 1965) and autonomic lability (Schacter, 1971).

Clearly the details of this fairly well-documented finding in biological criminality have yet to be worked out. There are provocative genetic, EEG, and autonomic nervous system data, but the intervening biological mechanisms proposed to translate from genetics through physiology to overt behavior are lacking.

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[1] Schizophrenia investigators, forced to grapple with the same problem, created international diagnostic guidelines.

A third issue concerns the differences between the two major classes of property offenders and violent offenders. These subtypes appear to sort along several biological dimensions. There is evidence suggesting a heritable basis for thievery (Bohman et al., 1982; Mednick et al., 1983) but a congenital or environmental basis for violence (e.g. Lewis, 1981; Mednick and Gabrielli, 1983).

Future thieves also differ from future violent offenders perinatally and in early childhood. Mednick and Gabrielli (1983) reported that although both classes of future delinquents experienced similarly poor social conditions during gestation, one-year examinations revealed that the two populations diverged. Future violent delinquents had poorer physical and neurological status and more minor physical anomalies than did property offenders and nonoffenders. Indeed, Mednick and Gabrielli suggest that violent behavior may result from nervous system damage due to prenatal trauma, whereas a predisposition to thievery may arise from inheriting a particular complement of genes. Additional evidence supports this dichotomy. Mednick used skin conductance and EEG to prospectively identify future property offenders but not future violent delinquents. Other investigators have also suggested that brain impairment is common among violent criminals (e.g., Mark and Ervin, 1970) but less so among property offenders. This finding needs to be integrated with other data on the issue. Patterson and his colleagues at the Oregon Social Learning Center have found that their parent training techniques reduce subsequent delinquency among aggressive children but not among young thieves.

IMPLICATIONS FOR PREDICTION

An effective prevention program must contain at least five components (Goldstein, 1982):

1. A condition that can be observed and recorded precisely
2. An identifiable at-risk population
3. A measure of incidence for the condition in the general population

4. A clearly defined intervention
5. A postintervention incidence measure.

But as Goldstein notes, despite recent advances in biomedical research, attempts in the primary prevention of schizophrenia still have to contend with deficiencies in items 2 and 4, although inroads are being made in both areas. In their efforts to more accurately identify the at-risk population, researchers are concentrating on the first degree relatives of schizophrenics.

Clearly defined interventions (item 4) are beginning to be developed for schizophrenia. Although large scale mental hygiene screening and prevention programs will not be implemented in the near future, progress has been achieved in more circumscribed settings. For example, the use of behavior modification therapy to alter the dynamics of family communication appears to be very effective (Rodnick et al., 1982).

Efforts to devise primary prevention programs for delinquency have both similarities and differences with attempts to prevent schizophrenia. Delinquency is regarded as less of a medical disease and more of a punishable offense than schizophrenia. Consequently there are numerous sensitive ethical questions involved in screening of children at risk for delinquency. For example, an attempt to screen for chromosomal abnormalities, including XYY genotypes, led to considerable controversy (Culliton, 1974). Clearly, in the case of delinquency, any kind of targeted primary prevention is not an option that Americans are willing to pursue because of the possibility of false positives, the known detriment of labeling, and the concomitant likelihood of self-fulfilling prophecy.

The possibility of intervention in late childhood or early adolescence following some indication of delinquency might be worthwhile. Because adolescence is generally a time for testing the rules of parents and society, the key issue is to sort between children who are experimenting and those starting out in careers as chronic offenders. Glueck and Glueck (1950) compiled a set of factors that might aid in the very early identification of potential delinquents. These included:

lack of attachment of parents to child
history of pathology[2] in one or both parents
lack of affectional relations between parents.

These variables closely resemble risk factors for the development of schizophrenia. Indeed Keith (1982) suggested that high risk prevention programs be broadened to address "social incompetence" rather than relying on narrow outcome measures (such as the adult manifestation of schizophrenia). This may indeed be an advantageous approach because recent data suggest that the course a particular individual's social incompetence takes is based on circumstance as well as physical forces. In other words, the behavioral consequences of early deprivation, physiological impediments, or other handicaps are expressed in social settings, and the notion of what constitutes appropriate behavior varies across settings. For example, Lewis and associates (1981) showed that incarcerated adolescents clinically resemble psychiatrically hospitalized peers. Race, rather than degree of violence, determined whether one was incarcerated or hospitalized. Thus similar patterns of violent behavior that resulted in black adolescents being incarcerated led to white adolescents being treated for psychiatric disorders.

Two sorts of biological features might aid a delinquency screening program in the identification of at-risk candidates. One type is associated with violent delinquents and includes congenital features such as minor physical anomalies, symptoms of psychosis, or injury-related factors. The second type of physical traits are associated with petty criminality or thievery, including underarousal as shown by EEG and GSR.

For two reasons, individuals having the signs and symptoms of violent delinquency should be identified and treated, while those having the correlates of thievery probably should not. First, violent crime is much more costly to its perpetrators and society. Children with these tendencies are likely to become so-called violent predators as adults.

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[2] Criminality, alcoholism, mental retardation, or emotional disturbance.

Second, differential reliability and validity of knowledge in these two areas warrants this approach. Data on the diagnoses and treatment of head injury are much more firmly established than are findings on hypoarousal and thievery. Recent advances in the genetics and psychophysiology of petty criminality are interesting and should be pursued by academics. Given the rudimentary state of present information and social priorities, however, application of these data should not yet be incorporated into policy and programs. The findings of Lewis and colleagues should be taken into account when devising prevention strategies. Opportunities to intervene on behalf of potentially violent children, who have already experienced considerable mental and physical abuse, must not be wasted.

The need to continue to pursue research, particularly with a high risk orientation, cannot be overemphasized. Massive efforts such as large scale prevention programs designed to prevent criminality and schizophrenia are not yet warranted, but research projects more limited in scope designed to enhance understanding of the nature and course of such disorders and to evaluate the effects of preventive efforts should be vigorously supported.

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CHAPTER VIII

TREATMENT INTERVENTIONS IMPLIED BY BIOLOGICAL FACTORS

by

Katherine Teilmann Van Dusen

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I. INTRODUCTION

This is a paper written for unbelievers, addressed to those who are angered by the idea of investigating biology and crime or who scorn it. It is not meant to convince them with empirical evidence that biology is implicated in criminal behavior, rather that (1) biological factors and treatments implied by them need not be mysterious or ominous, and (2) there are some *directions* that we might look to for treatment interventions if the evidence *does* ultimately warrant it. For judgments about the validity of relations discussed here, refer to Mednick and Volavka,[1] Freier,[2] and Mednick, Moffitt and Stack.[3] No finding is mentioned here that is not thoroughly covered in those references.

One of the most common objections to the pursuit of knowledge about the possible relation between biology and crime concerns the basic plausibility of the idea of biological factors as influences on criminal behavior. This discussion is included here because experience has shown that it is futile to proceed with *any* discussion of biology and crime until the basic plausibility question has been addressed. Accordingly, this discussion will be brief.

A student critical of the notion of biological factors believes it ridiculous to imagine a youngster facing merchandise on a store shelf and a (biological) force raising his hand to remove (steal) the item. This is not a very plausible image. Another rather common observation is that it is, on the face of it, absurd to believe that sweaty palms are somehow connected to delinquent behavior or its lack. (The term "sweaty palms" is a facetious reference to tests of skin conductance--sometimes referred to as galvanic skin response--that have been related to delinquent behavior.)

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[1] S. A. Mednick and J. Volavka, "Biology and Crime," in Norval Morris and M. Tonry (eds.), *Crime and Justice: An Annual Review of Research,* Vol. II, University of Chicago Press, Chicago, 1980.

[2] M. Freier, "The Biological Bases of Criminal Behavior," in this volume.

[3] S. A. Mednick, T. E. Moffitt, and S. Stack, *Biological Factors in Predictions to Crime,* Cambridge University Press, New York (in press).

The example of temperament addresses the question of plausibility effectively. Do we really believe that we are all born with the same temperament? No. Are children with some temperaments more susceptible to parental efforts at behavior control than others? Most people answer "yes" to this question. If we are *born* with different temperaments, doesn't this imply that there is a biological basis for temperament? This establishes at least the plausibility of the idea that biological factors affect temperament, which can, in turn, affect malleability, which can, in turn, affect behavior of various kinds, including the criminal kind.

Another example concerns the process of inhibition. Most would agree (as do all forms of control theory) that we all have impulses that, if carried out, would result in unacceptable behavior. We inhibit most of these impulses as the result of many factors, including biological ones. To the extent that we can establish any biological influence on inhibition, we can assume that variations in ability to inhibit could result in variations in tendencies to *fail* to inhibit *criminal* unacceptable behavior. There is a great deal of clinical evidence that the frontal lobes of the brain are important to the inhibition process.[4] Persons with frontal lobe damage typically begin losing inhibitions that they had had all their lives before the damage. Evidence from rat experiments indicates that the limbic system is important in inhibition, and damage to or loss of the hippocampus results in losses of inhibition.[5] Thus, some biological basis for inhibition is at least plausible.

This is all that will be said on the subject of plausibility. But even when biological factors are *involved* in behavior, they do not *determine it;* rather, biological factors can be said only to render us more or less susceptible to environmental conditions. This is an important point. It makes the whole line of inquiry less ominous.

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[4] A. R. Lauria, "The Frontal Lobes and the Regulation of Behavior," in K. H. Pribram and A. R. Lauria (eds.), *Psychophysiology of the Frontal Lobes,* Academic Press, New York, 1973.

[5] R. L. Isaacson and K. H. Pribram (eds.), *The Hippocampus,* Plenum, New York, 1975.

The second objection often raised by critics of pursuing biological factors is directly related to the theme of this paper. If we did establish some biological bases for criminal behavior, what would this imply about treatments or interventions for offenders with such biological conditions? Critics usually assume that it implies nothing good. Images of Nazi medical experiments come to mind. Certainly, only biological interventions are implied. That is far from true. The remaining pages will enumerate some of the positive nonbiological interventions that might be implied by various hypothesized biological factors in criminal/delinquent behavior. This is not to say that no biological treatments are possible or even advisable, but the purpose here will be only to establish that biological factors can and do imply various positive nonbiological interventions.

II. SOME EXAMPLES

SWEATY PALMS AND BRAIN WAVES

There is some evidence that skin conductance response and electroencephalogram (EEG) results can, to some degree, predict delinquency.[1] There is no need to give evidence for these relations, but there *is* a need to explain what they mean.

Skin Conductance

If you attach two wires to a person's finger and connect the wires to a battery, a small amount of current can be "leaked" through the finger. The finger presents a certain amount of "resistance" to the current, which can be measured on a meter. "Resistance" can be decreased by an increase in salty sweat on the finger. This decrease in resistance can, of course, also be measured by the meter. The question is, what causes increases and decreases in sweat, and what does this have to do with delinquency? It turns out that if we excite the person who is wired, the sympathetic branch of his autonomic nervous system (ANS) will, among other things, cause sweat to be produced on the palms of his hands. We are all familiar with the physiological results of being excited: increased pulse rate, perspiration, changes in breathing, etc. This happens whether the excitement is positive or negative. This includes fear, sexual arousal, anxiety, etc. These emotions will result in activity in the ANS that produces sweat (and decreased resistance) that will be duly measured. We can, in some sense then, measure emotional response to various stimuli. People vary a good deal on their degree of ANS response to these stimuli, as they vary in emotional responsiveness. Variation in emotional responsiveness has been related to criminal behavior in many studies.[2] Specifically low responsiveness is associated with criminal behavior.

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[1] Mednick and Volavka, "Biology and Crime." S. A. Shah and L. H. Roth, "Biological and Psychophysiological Factors in Criminality," in D. Glaser (ed.), *Handbook of Criminology*, Rand McNally College Publishing Co., Chicago, 1980.

[2] D. A. T. Siddle, "Electrodermal Activity and Psychopathy," in S. A. Mednick and K. O. Christiansen (eds.), *Biolsocial Bases of Criminal*

Electroencephalograms

It is common knowledge that our brains emit electrical signals, which are waves that vary in cyclic frequency. The frequencies of the signals depend on the activity level of the brain and the age of the person, among other things.[3] The frequencies are categorized into bands, one of which is the alpha band. If most of the activity is in the alpha band, the person can be assumed to be drowsy or at least relaxed. Beta is a faster frequency band and indicates more intense brain activity. Some research has shown that delinquents' brain activity tends to be unusually concentrated in the low end of the alpha band, indicating a lower level of arousal than is true of nondelinquents. Interestingly, the findings about the relation between ANS responsiveness and delinquency/crime also are interpreted as low arousal among delinquents.

Theories and Implied Treatments

Two major theories are based on the observed relations between arousal level and criminal behavior. They are quite different from each other and have different treatment implications. However, they should not be seen as contradictory, nor are the treatments mutually exclusive.

The first theory interprets the low levels of arousal characteristic of delinquents as a lack of fear,[4] which has implications for learning conforming behavior or for inhibiting objectionable behavior (such as crime). The basic assertion is that a child who is less fearful of punishment than average will be less adept at learning from punishment. He will require more discipline or training to learn to stop bad behavior than an average child would need.

Behavior, Gardner, New York, 1977. P. H. Venables, "Autonomic Nervous System Factors in Criminal Behavior," in Mednick, Moffitt, and Stack, (in press). R. D. Hare and D. Schalling, *Psychopathic Behaviour: Approaches to Research,* Wiley, New York, 1978. D. A. T. Siddle and G. B. Trasler, "The Psychophysiology of Psychopathic Behavior," in M. J. Christie and P. G. Mellett (eds.), *Foundations of Psychosomatics,* Wiley, Chichester, 1981.

[3] Mednick and Volavka, "Biology and Crime."

[4] S. A. Mednick and K. O. Christiansen, *Biolsocial Bases of Criminal Behavior,* Gardner, New York, 1977.

The choice of the most effective treatment for this type of child would depend on his circumstances. However, in general, the underlying principle for any treatment or intervention would be consistency and firmness of discipline as well as patience. If he has a good family, simply educating the family as to the child's special needs might be sufficient. His special needs would include, perhaps, extra supervision, special attention to consistency in discipline, and attention to types of discipline that seem to be more effective for him. Most important, he may need a longer period of discipline than his siblings needed before the parents achieve an acceptable degree of conformity from him. The biological factor under consideration here is not an all or nothing matter. It is a continuum and will be somewhat individualized depending on the specific social (and other biological) circumstances of the child. A special point of this is made here because people often think of biological factors as "cut and dried," leaving no room for judgment or discretion. In addition, consideration of biological factors seems to stimulate the thought that such factors *determine* behavior more than do other, nonbiological factors. The biological factors almost always interact with experience. This fact makes it possible to envision social treatments even where biological etiological factors are involved.

The one treatment that has been mentioned so far pertains to the child with low fear response but who has a good family. This is not always the case, however. What about the child with a less-than-perfect family? Or who is particularly extreme on this arousal dimension? In these cases, it would seem logical to consider special school settings or residential settings geared to the needs of such a child. Without a doubt, the traditional strategy of sending a difficult child to a military school was employed for this type of child, even if the underlying cause (perhaps biological) had not been specifically identified. Appropriate schools exist now, and some could be further elaborated for this type of child. One might wonder, at this point, whether these strategies might be euphemisms for brutal punishments in the name of firm and consistent discipline. This is certainly not what is being suggested here, and it would have to be controlled carefully.

However, this problem shows up everywhere, not just in a situation where children with biological disadvantages are being considered or treated.

This first intervention discussed is not a new or unique one, specific only to children with biological deficits. It is brought in here partly *because* it is not so different from what we are used to thinking of. It contributes to the point that there is nothing necessarily mysterious or alarming about treatments for children with biological deficits. The reasons for studying biological factors do not lie in the unique treatments they may imply.

The second theory of low arousal posits that persons with low arousal are simply bored and are constantly seeking stimulation and excitement. The question arises in this connection whether the ANS and brain activity are *causes* of the search for stimulation or whether they simply *reflect* the psychological state of boredom (and high need for stimulation). In this case, it makes little difference what is the cause and what is the effect. The treatment is the same. For those people, two major areas should be considered. The first is schooling. They are likely to need material and structure that will be especially stimulating to them.[5] This might include instruction with many concrete examples, new "stations" (or locations) for each subject of instruction, frequent changes of subject, field trips, etc. The second area is employment. As adults, these types of individuals are likely to find themselves without adequate education to pursue many lines of employment. That is unfortunate because many of the more exciting jobs require technical education. Facilitating this type of person's success in school will be to everyone's advantage because an exciting career will probably do a lot to keep the person out of trouble. Control theory supports this by pointing out that having or anticipating an exciting career will generate stakes in conformity and thus reduce the chances that the individual would take a chance on getting into trouble with the law.

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[5] A complication: Some low arousal children may also have trouble with impulse control, implying a need for a calming setting. The balance between stimulating and calming may be difficult.

If education has not been a success in spite of all endeavors, other fairly exciting jobs should be considered for training efforts. The first theory (which does not contradict this one) indicates that the individual with low arousal is low on fear. Often, exciting jobs include an element of danger, and this would be just the thing for this type of person; his performance would be less disrupted by fear than most. Some traditional jobs such as policeman and fireman are not inappropriate here; also, high rise building construction and ambulance driving are possibilities. California's Department of Corrections has experimented with training in deep sea diving for some of its inmates. The theory of low cortical and ANS arousal would predict that this type of employment is ideal.

In the extreme, the physiological characteristics that we have been considering here have been found to describe psychopaths.[6] There is a considerable literature on this point, and over the years, certain occupations have sometimes been mentioned as possibly appropriate for psychopaths. One of these is airline pilot, which can be exciting, and it requires the ability to remain cool under pressure. However, psychopaths tend to filter out incoming information other than what they are focused on at the moment,[7] and that is *not* a desirable characteristic in a pilot. These issues are beset with complexities and careful research is necessary. Solutions may seem seductively simple, but reality seldom is.

The above discussion of occupations seemed geared for adults while education was the emphasis for children. This division should not be taken too rigidly. In particular, it seems profitable to address the issue of occupation while the youngster is still quite young. This might take the form of occupational counseling or guidance. One advantage in this approach is that if, through occupational counseling, a youngster identifies an occupation that seems exciting and accessible to him, he is more likely to pursue the training necessary for it while he is still at a normal school age. Another advantage is that, for some occupations, junior "apprenticeships" are possible for involvement and experience at an early age. Some police departments have such programs. Also, even if there is nothing that could be defined as an apprenticeship, if the youngster knows he wants to work in a particular field, he may be able to get lower level work in the area that would still allow him some exposure and a sense of involvement in his field. Surely no one would expect this to be an easy accomplishment. If it were, youth unemployment would not be at its present level. Yet it is probably little more difficult than any other social intervention at this time. The treatments implied by biological factors, however difficult to carry out, need not be any more objectionable than treatments implied by any other cause.

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[6] J. Volavka, "Electroencephalogram Among Criminals," Mednick, Moffitt, and Stack (in press). R. D. Hare and D. Schalling, *Psychopathic Behaviour: Approaches to Research*, Wiley, New York, 1978.

[7] R. D. Hare, "Electrodermal and Cardiovascular Correlates of Psychopath," in Hare and Schalling, 1978.

LOMBROSO REVISITED

Cesare Lombroso was a nineteenth century Italian criminologist[8] who described the "born criminal" as a sort of biological "throwback" to a primitive type of man, who was supposed to be characterized by physical stigmata resembling the apes and by uncontrollable criminal tendencies (Reckless (1973)).[9] Almost any reference to Lombroso in the current literature is there only to point out the progress made in criminology since his time. This approach may be a little glib. One's credibility is likely to suffer by invoking the name of Lombroso in any other than the usual way.

The research group at the University of Southern California has been studying minor physical anomalies (MPAs) and their relation to criminal behavior. MPAs are visible abnormalities with which a person is born. They include large spaces between the toes, a lack of earlobes, sparse hair, very wide-set eyes, low-set ears, and many others. In the developing fetus, the ears, eyes, nose, toes, and the central nervous system emerge from the same dermal layer, the ectoderm.

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[8] Cesare Lombroso, *Crime: Its Causes and Remedies*, Little, Brown, and Company, Boston, 1918.

[9] Walter Reckless, *The Crime Problem*, 5th ed., Appleton-Century-Crofts, New York, 1973.

In addition, it is known that any given teratogenic agent (nutritional deficits, alcohol, medicines, infections, etc.) that is introduced at any particular point in the life of a fetus will disturb the development of whatever is developing on that day. Many things will be developing at any given time. MPAs are *visible* signs of disturbance in development--neurological faults are hidden. MPAs are overt, easily scored signs of difficulties in development that also affect neurological structures.

Findings are emerging from a 25-year prospective longitudinal study suggesting that individuals with many MPAs are later likely to be involved in delinquent behavior, and their delinquencies are likely to be impulsive.[10] There is more than one interpretation of this fact, but a compelling one stems from the fact that MPAs often reflect the presence of faulty development of neurological structures.

A second set of findings that is already in the literature is based on the results of CT scans (x-rays of the brain). Commonly called "cat scans," these x-rays can reveal the presence of enlarged ventricles (spaces) in the brain, reflecting brain atrophy, which can begin with damage to the fetus and progress over time. They have specifically been related to such birth difficulties as low birth weight and prematurity.[11] Brain damage, if it is in the right area, can be related to poor impulse control (discussed earlier). The point of this discussion is to note the potential of brain damage or faulty neurological development for criminal/delinquent behavior; many events (and neglects) during pregnancy can have effects in this area. Brain damage can result in difficulty in impulse control. Obviously, it can have many other consequences as well. At the least, early brain damage can put a person at a disadvantage for succeeding in life.

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[10] S. A. Mednick and W. F. Gabrielle, Jr., *Biological, Psycholocial, and Sociofamilial Factors in Crime*, Final Report, Part II, to U.S. Department of Justice, National Institute of Justice, Washington, D.C., 1983.

[11] F. Schulsinger, [illegible]. Parnas, E. T. Peterson, H. Schulsinger, T. W. Teasdale, S. A. Mednick L. Moller, and L. Silverton, "Cerebral Ventricular Size in the Offspring of Schizophrenic Mothers," *Archives of General Psychiatry*, Vol 41, pp. 602-606.

MPAs make no difference in the prediction of delinquency when the family is a stable, intact one. Where there is disruption in the family, MPAs are very predictive. This same interaction is seen in the case of prematurity at birth. Premature children evidence disturbances in school performance, but these problems are not found if the child is raised in a stable family.[12] The clear message here is that families with resources, with stability, and with focus on the children can overcome the deficits that many children are born with. Again, biology is important--but it is not destiny. If this set of relationships is ultimately nailed down and elaborated, it may point to resources that parents and children should be provided to overcome handicaps of this sort. The very great advantage of identifying these high-risk children is that chronically limited resources can be targeted to them on the basis of their risk status.

The more important implication of this type of biological factor concerns prenatal care. The obvious treatment intervention for this problem is the provision of information and resources to pregnant women so that teratogenic factors would be significantly reduced. It is more and more clear that nutrition is essential to a healthy fetus. Blacks in this country suffer a very high rate of birth difficulties, and it is increasing rather than decreasing.[13] It is unconscionable for a society to allow this to happen to any group; this argument can be based only on moral considerations. Nevertheless, the connection of this fact with crime might serve as an additional incentive to address the problem. That would be prevention at its best.

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[12] C. M. Drillien, *The Growth and Development of the Premature Birth Infant*, Williams and Wilkins, Baltimore, 1964.

[13] U. S. Department of Health, Education and Welfare, Public Health Service, *Vital and Health Statistics of the United States*, Hyattsville, MD., 1940-1979.

III. IDENTIFICATION ISSUES

Inevitably, a discussion of treatment interventions brings to mind the issue of identification. How and when would persons in need of treatment be identified? Equally inevitably, a serious consideration of the latter question brings us face to face with a dilemma: Do we attempt early identification and maximize the chances of changing the course of development? Or do we wait until later when we will be more sure intervention is needed but find that the negative patterns are too set to alter? Early identification means many false positives and potential labeling or self-fulfilling prophesies. Late identification means more harm done to the individual, his family, and the community before action is taken, and less chance of affecting future behavior. It is a constant dilemma. It will never go away. We can only try to optimize by tailoring our decisions to the unique characteristics of the type of problem we face.

Criminologists tend to think of biological factors as more *determining* than social factors. Thus, if a child is pronounced biologically criminogenic, it is more damning than if his *family* were pronounced crime-prone. As pointed out earlier, this is certainly not true, but the fact that people believe it must be acknowledged. It can be acknowledged in two basic ways: first, by delaying identification of biological factors until later in the person's life when we are more sure it is warranted; second, by taking some care in the presentation of findings to individuals involved so that they are disabused of any overly deterministic ideas. Neither of these is easy or simple in practice. Both are worth considering as principles.

LOW AROUSAL

Children who are troublesome in school in terms of academic performance (accompanied by behavior problems) will often be assessed to determine the source of the problem. If it is not done routinely in a particular school, it should be. The child is likely to be subjected to a battery of tests to ferret out visual problems, dyslexia, learning disabilities of various kinds, hyperkinesis, etc. If our knowledge of biological factors in delinquency (or troublesome behavior) were at a stage that it was reasonably predictive--it will never be 100 percent predictive--the diagnostic assessment of learning and behavior problems in school seem the likely place to identify low arousal types. First, children having difficulties in school form the subgroup most likely to contain the low arousal individuals[1]; second, the tests for low arousal would seem less strange or frightening in this context than they might in others. In other words, the tests themselves would not brand the child beyond what is already happening to him.

If we can assume, for the moment, that those who are doing the assessment, diagnosis, and presentation to the parents are knowledgeable, they would be in a position to present parents and teachers with several possibilities. Based on the specific constellation of factors identified (over the entire assessment), parents could be presented with the nature of the problems and (1) schooling options that were described earlier, (2) discipline and supervision needs of the child, and (3) stimulation needs of the child. It would not be necessary, or even accurate, to declare that the child is destined for chronic delinquency. It is only necessary to point out what the problems are and their potential solutions. Attentive parents with resources could try to address the problems themselves or seek outside help. Those making the diagnosis of all the problems might suggest outside agencies geared to the child's problems. Parents who have no resources and who cannot alter their supervision arrangements would have a more difficult problem that cannot be addressed here.

Junior high school is another point at which problems commonly manifest themselves. Similar assessments could be made at this point where there are clear problems arising in school. This is the point at which occupational guidance of the sort indicated earlier seems appropriate. Here, of course, there is the danger of premature "tracking," which should be avoided. If a practitioner were oriented to the approach taken in this paper, some considerable effort would have been invested in generating knowledge of occupations and relevant training geared for the low arousal type of individual. They would not be menial or limiting. That would be quite contrary to the spirit of what is suggested here. The point is that the occupation should be exciting and *attractive* to those who need it the most. This type of guidance would come only with considerable effort and experience.

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[1] P. H. Venables, "Autonomic Nervous System Factors in Criminal Behavior," in Mednick, Moffitt, and Stack (in press).

The next logical point at which identification of potential future serious delinquents might occur is with the child's first contact with the justice system. Having run afoul of the law adds two elements to the picture. First, there is one more piece of information toward an accurate prediction of future behavior; and second, there is more (perhaps not sufficient) justification for taking action. Nevertheless, the same basic options that were described earlier are appropriate, but with a little more certainty and authority. In addition, there may be more justification for providing needed *resources* to follow through on interventions that are indicated by the circumstances.

Finally, we face the question of how to identify the low arousal type of person who has become an adult offender. At this point, we will, presumably, be less concerned with self-fulfilling prophesies, but we also must face the fact that patterns of behavior are somewhat set. Schools with special attention to discipline and supervision and stimulation are less promising at this stage. Of the options considered in this paper, the occupational training approach is the only one that seems really practical and certainly seems worth pursuing.

BRAIN DAMAGE

The best and most moral approach to the problem of brain damage is prevention rather than identification. This would occur at the prenatal stage, should be done on grounds other than crime prevention, and should be targeted epidemiologically rather than individually. However, even if we substantially improved our practices in this area, we are still left with the fact that faulty neurological development will sometimes occur and will present itself in various forms. One of these might be a lack of impulse control. There are too many possibilities to cover here, so we will focus on only this one.

The identification of individuals who have difficulty controlling impulses could take place at the same stages that were discussed for the low arousal types. However, it may not be necessary to establish the biological basis for it. There are many effective tests of impulsivity.[2] One of them could be administered at the same time that other diagnostic tests were administered. Some kind of behavior-oriented therapy could be recommended or imposed depending on the stage of development and on the moral and political decisions that are made at a more general level. Another approach, dependent on early identification, would be to impress upon the parents the importance of at least one very strong and enduring bond with an adult. This would make it more likely that the child would respond to the controlling efforts of the adult(s) with whom he is bonded.

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[2] For example, the Gibson Spiral Maze, the Porteus Maze, and certain personality scales of the California Psychological Inventory.

IV. CONCLUSION

The aim of this paper has been to point out some implications of biological factors in crime and delinquency, feasible treatment interventions, and the real possibility that something *positive* could come from knowing that biology plays a part in the development of a criminal career. Whether the outcome is positive or negative will depend only on our moral and political stance regardless of the knowledge we have. Certainly this paper has not focused on negative or frightening potentials. This was an attempt to point out that there is another way of looking at the information.

It is also important to remind the reader again that the interventions and identification procedures discussed here were based on the assumption of a not-yet-achieved state of knowledge concerning biology and crime. The traditional call for more research is infused with more than the usual meanings. This is an appeal for the criminological community not to *resist* the pursuit of research into biology and crime, to point out that we don't yet know enough to put any of this into practice, to note that it is important to gain the knowledge such research would bring.

CHAPTER IX

SCHOOL-BASED STRATEGIES FOR DELINQUENCY PREVENTION

by

Jackie Kimbrough

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I. INTRODUCTION

The task of identifying appropriate interventions for delinquent or predelinquent youth is a difficult one. Recent research indicates that institutional confinement of chronic juvenile offenders does not promote rehabilitation. Indeed, Greenwood reports that recidivism for institutionalized chronic juvenile offenders exceeds 70 percent.[1] Given the limited success of many treatment programs, policymakers have begun to explore strategies for preventing delinquency, rather than for treating chronic delinquents.

This paper examines the role that schools can play in preventing delinquency. We consider schools as a locus of intervention since they are the first structured social organization that most children encounter. Early misbehavior and low achievement, both of which are related to subsequent delinquency, can be easily identified at the classroom level. And, as Clements notes, school is the setting in which potential delinquency problems become most apparent.[2]

Two perspectives for viewing the problem of delinquency in schools are individual psychopathology and situational determinism. These are based on slightly different notions of the causes of delinquency and have different implications for intervention.

Individual psychopathology represents the traditional approach to addressing the problem of delinquency in schools. Based on a medical model, this approach assumes that temperaments and character traits distinguish delinquent from nondelinquent students.[3] Although observable behaviors create most of the problems for the school, assumptions are made about the existence of intrapsychic traits that need altering. Thus, intervention often involves counseling or therapy to increase the student's self-esteem or motivation.

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[1] P. Greenwood et al., *Youth Crime and Juvenile Justice: A Report to the California Legislature*, The Rand Corporation, R-3016-CSA, 1983.

[2] C. Clements, "The School Relations Bureau: A Program of Police Intervention," *Criminal Justice and Behavior*, Vol. 2, 1985.

[3] S. Glueck and E. Glueck, *Delinquents and Nondelinquents in Perspective*, Harvard University Press, Cambridge, Mass., 1968.

Even when intervention does not emphasize a presumed intraphysic trait, it is provided on an individual basis outside the social context in which negative behaviors occur. For example, a misbehaving student is usually sent out of the classroom to an administrator to be disciplined and may be subsequently suspended or expelled. Critics of this approach contend that it is punitive and exclusionary and obscures the rule of social institutions in eliciting or maintaining negative behaviors.[4]

Limitations of the individual psychopathology model become even more apparent when one considers it as the basis for school intervention. Short of recommending the hiring of more and better counselors for one-to-one sessions, there are few policy implications of this approach. Moreover, there is little evidence of the efficacy of prevention or treatment strategies based on this model. The few evaluations of individual counseling and tutoring that appear in the literature yield equivocal results and are of limited generalizability. Evaluations of school-based programs that segregate delinquent students for treatment also fail to yield positive results.[5]

Situational determinism represents a newer approach to the problem of delinquency.[6] This approach makes no assumptions about intrapsychic traits or states. Instead, it focuses on observable behaviors and the situations in which those behaviors are elicited. Basically, this approach assumes that negative behavior is maintained, if not caused, by the social environment. Indeed, a number of theorists contend that school classroom management strategies, such as negative labeling of students, subsequent ability tracking, low teacher expectations, and inappropriate reinforcement are causes of delinquency and delinquency-related behaviors.[7] Other theorists contend that misbehavior and low achievement are maintained by inappropriate school and classroom management. Both groups of theorists argue that schools can prevent delinquency by altering the within-school conditions that promote it.

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[4] E. Wertleib, "Juvenile Delinquency and the Schools: A Review of the Literature," *Juvenile and Family Court Journal*, Vol. 33, 1982.

[5] R. Balch, "The Medical Model of Delinquency," *Crime and Delinquency*, Vol. 21, 1975.

[6] W. Wayson, personal communication, 1984.

[7] J. Phillips, and D. Kelly, "School Failure and Delinquency," *Criminology*, Vol. 17, 1978; also, W. T. Pink, "School Effects, Academic Performance and School Crime," *Urban Education*, Vol. 17, 1982.

The basic issue, of course, is whether there are specific strategies or practices that schools can use to prevent delinquency. If such strategies do exist, a related issue is under what conditions would schools be likely to implement them. This paper primarily addresses the former issue and explores strategies designed to prevent delinquency and delinquency-related behaviors.

DELINQUENCY AND SCHOOL PERFORMANCE

Several studies have found that delinquency is related to both low achievement and misbehavior. There is a considerable body of evidence indicating that delinquents perform more poorly in school than nondelinquents.[8] Other research has found negative attitudes toward school to be related to delinquency. For example, delinquents are less "bonded" to school than their nondelinquent peers.[9] Delinquent students reportedly tend to dislike school,[10] perceive coursework to be somewhat irrelevant, and spend less time on homework than their nondelinquent peers.[11]

Research has also identified a positive relationship among delinquency, low achievement, and misbehavior. In their study of student behavior in high schools (1981), NCES found classroom misbehavior (e.g., disobedience, absenteeism, disruptiveness) to be positively related to delinquency.[12] Furthermore, misbehaving students were more likely to be low achievers than high. In the same vein,

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[8] D. Kelly and R. Balch, "Social Origins and School Failure: A Reexamination of Cohen's Theory of Working Class Delinquency," *Pacific Sociological Review*, Vol. 14, 1971. See also K. Polk et al., "Social Class, School Experience and Delinquency," *Criminology*, Vol. 12, 1974; and W. Slocum and C. Stone, "Family Culture Patterns and Delinquent-Type Behavior," *Marriage and Family Living*, Vol. 25, 1963.

[9] D. E. Frease, "Schools and Delinquency: Some Intervening Processes," *Pacific Sociological Review*, Vol. 16, 1973.

[10] Kelly and Balch, 1971.

[11] D. Elliot and H. Voss, *Delinquency and Dropout*, D. C. Heath, Lexington, Mass., 1974.

[12] National Center for Educational Statistics, *Discipline, Order and Student Behavior in American High Schools*, U.S. Department of Education, Washington, D.C., 1981.

Glasser contends that students who pose behavior problems have little investment in school and seldom participate in school activities.[13] Given the relationship between delinquency and low achievement or misbehavior, the latter variables seem an appropriate focus for school-based prevention programs.

EVALUATION OF DELINQUENCY PREVENTION PROGRAMS

The literature generated by school-based delinquency prevention programs has not been very enlightening. Evaluation of these programs has been hampered by flaws in program design that make it difficult to interpret program results. These flaws include poorly specified program interventions, very small samples, inappropriate or non-existent comparison groups, short-tenure interventions, and inappropriate delinquency measures.[14] Acknowledging these problems, OJJDP funded several evaluations of school-based delinquency projects in the early 1980s. Preliminary evaluation results are becoming available for a few of these projects, and elements common to project success are described below.

Two studies had well-specified interventions. The PATHE program, reported by Gottfredson, was implemented over a two year period in four middle and three high schools in South Carolina.[15] Intervention included five components, the following two of which have been used successfully by other projects:[16]

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[13] W. Glasser, "Disorder in Our Schools: Causes and Remedies," *Phi Delta Kappan*, Vol. 59, 1978.

[14] D. Ogawa, "Preventing Delinquency: The Record of Accomplishment," in G. Gottfredson (ed.), *School Action Effectiveness Report*, Center for the Social Organization of Schools, Johns Hopkins, Baltimore, 1982. See also J. Hawkins and J. Wall, *Alternative Education: Exploring the Delinquency Prevention Potential*, NJJAC, Washington, D.C., 1982; and M. Dixon and W. Wright, *Juvenile Delinquency Prevention Programs: An Evaluation of Policy Related Research in the Effectiveness of Prevention Programs*, NSF, Washington, D.C., 1975.

[15] D. Gottfredson, *Project PATHE: Second Interim Report*, Center for the Social Organization of Schools, Johns Hopkins, Baltimore, 1982.

[16] The remaining three components are career orientation, dealing with specific student needs, and affective development.

- *Participatory decisionmaking*, in which staff/parent/student groups are involved in decisionmaking regarding school management, including discipline policy; and
- *Student team learning*, in which heterogeneous student teams work cooperatively on academic tasks.

Results indicate that overall intervention effects for target students were stronger at the middle school than at the high school level. Target students in the four middle schools and two of the three high schools scored significantly higher on standardized achievement tests and received significantly higher grades than did random control students. Target students in all four middle schools tended to have better attendance records than random-equivalent control students, although the difference was not significant. Moreover, target students in the middle school reported significantly less delinquent behavior than random-equivalent controls. The three high schools experienced reductions in self-reported delinquency and in suspensions.

Using similar program strategies as part of their delinquency prevention project, Hawkins and Lam also obtained reductions in delinquency-related behaviors.[17] Researchers postulated that their interventions would increase "social bonding" to schools, which would decrease delinquency-related behavior.

The study consisted of 54 experimental classes and 59 comparison classes selected from five Seattle middle schools. All students were seventh graders and regular teachers were randomly assigned to conditions. The intervention consisted of the following three components.

- *Proactive classroom management* emphasizes the teacher's organization and management of her class. Teachers provide clear and explicit instructions for behavior and frequent, contingent rewards and praise; and they establish methods of reducing classroom disruptions.

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[17] J. D. Hawkins, and T. Lam, *Teacher Practices, Social Development and Delinquency*, paper presented to the Vermont Conference on the Primary Prevention of Psychopathology, 1983.

- *Interactive teaching* requires student mastery of specified learning objectives before proceeding to the next task. Clear, objective performance standards are expected to promote student belief in the fairness of the education system; and
- *Cooperative learning* involves the heterogeneous grouping of students as interdependent learning teams and provides positive recognition for team academic progress. Each student's academic progress contributes to the team's overall achievement.

The cooperative learning strategy is conceptually and operationally similar to student team learning as reported by Gottfredson. Both strategies are based on the cooperative learning techniques of Slavin, De Vries, and Johnson.[18]

Delinquency-related outcomes were assessed at the end of the school year. In general, results showed the intervention to be somewhat effective. When experimental teachers used the strategies described above, students engaged in more behaviors related to academic success (e.g., they were less likely to be off-task). Use of the strategies also resulted in improvement in math achievement and math grades, although the increases were not significant. No improvements were found for language arts. Experimental students were also found to be better bonded to schools for math than were the control students. However, the strategies did not result in increased bonding to prosocial peers for the experimental students. No relationship was found between the use of the strategies and truancy, theft, or alcohol and drug problems, although suspensions and expulsions decreased for the experimental group.

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[18] R. E. Slavin, "Cooperative Learning," *Review of Educational Research*, Vol. 50, 198. See also, D. DeVries, and R. Slavin, "Teams-Games Tournament: A Research Review," *Journal of Research and Development in Education*, Vol. 12, 1978; and D. W. Johnson, and R. W. Johnson, "Cooperative Learning: The Power of Positive Goal Interdependence," in M. Lyons (ed.), *Structuring Cooperative Experiences in the Classroom: The 1980 Handbook*, A Cooperative Network Publication Publication, Minneapolis, 1980.

In a two year intervention designed to reduce disruptive behavior and crime in schools,[19] 200 elementary, middle, and senior high schools participated. The main feature was the school team approach, in which trained teams were dispatched to work in schools on problem behavior. The teams consisted of 6-8 parents, students, school staff, and community residents.

The primary evaluation results were that school crime and disruptive behavior were reduced and that the reductions were more pronounced for the middle school than for high school or elementary school. Differential effectiveness for team approach was found by school type. For example, the most effective approach for high school teams was to improve communication between students and teachers through joint student-teacher problem solving groups, which addressed issues of student behavior, discipline, etc. This approach is quite similar to the joint decisionmaking strategy reported by Gottfredson.

For the middle school, the most effective strategy was to improve parent-teacher relations and the handling of discipline and security problems within schools. For elementary schools, the most effective strategy was improving relations between students and teachers.

It is impossible to specify the aspects of intervention that contributed to particular outcomes. However, cooperative team learning was the strategy common to the two interventions that improved achievement. For the interventions that reduced disruptive behaviors and discipline problems, the common strategy was to involve students and staff in joint problem-solving about important school issues, including discipline.

SCHOOL PRACTICE AND DELINQUENCY RELATED OUTCOMES

The previous section was drawn from the intervention literature and specified effective strategies for preventing delinquency. This section is based on studies of school practices and delinquency-related outcomes. Effective strategies are specified for improving discipline problems and misbehavior and low academic achievement.

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[19] J. Grant and F. Cappell, *Reducing School Crime: A Report on the School Team Approach*, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, D.C., 1983.

Misbehavior

In a recent study, Wayson and Lasley[20] addressed the issue of why some schools are more effective than others in preventing discipline problems. These researchers surveyed student behavior and school organization and management in more than 500 elementary, junior high, and senior high schools. They concluded that student misbehavior, in most cases, could be traced to mismanagement at the school or classroom level.

According to Wayson and Lasley (p. 419), schools with disciplined students are characterized by "a sense of community, marked by mutually agreed on behavioral norms . . . which surround students with examples of acceptable behavior and provide the subtle rewards and sanctions that encourage students to behave appropriately." Wayson and Lasley list five characteristics of schools that are related to positive behavior and discipline.

- *Student belonging and responsibility*, which are promoted by insuring that each student has access to a concerned adult, and involving students in school problem solving and decisionmaking.
- *Superordinate school goals* with students involved in establishing them.
- *Symbols of identity and excellence*, which foster student and staff bonding to the school.
- *Leadership* to sustain positive school values.
- *Clear formal and informal rules* including establishing explicit behavior codes, clearly communicating the codes, and providing consistent responses to behavior infractions.

The Safe School Study found similar school organization variables to be related to student behavior.[21] NIE researchers found misbehavior and violence to be lower in schools with the following characteristics:

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[20] W. Wayson and T. Lasley, "Climates for Excellence: Schools that Foster Self Discipline," *Phi Delta Kappan*, Vol. 65, 1984.

[21] NIE, *Violent Schools-Safe Schools*, Washington, D. C., 1978.

- *Strong and effective school governance*, with the principal exercising consistent, highly visible leadership.
- *Cohesion and coordination* between administration and staff.
- "*Firm, fair, and consistent*" discipline policies.
- *Rational, visible reward structure* that recognizes students for their achievements.
- *Participatory decisionmaking*, with student involvement in important policy decisions.
- *Student and staff identification* with and bonding to the schools.

At a minimum, schools with few problems of student discipline are characterized by strong school governance and student leadership; discipline policies that are visible, consistent, and fairly enforced; student participation in decisionmaking; and student and staff bonding to the school.

Low Academic Achievement

The issue of whether schools make a difference in student achievement was vigorously debated in the wake of the 1966 Coleman report.[22] Coleman contended that the strongest predictor of student performance was student family background. Moreover, he concluded the increases in school resources would not result in increased school achievement for low income and minority students. These findings were widely interpreted as meaning schools can do nothing to overcome the initial educational disadvantages of low income and minority students.

Sophisticated reanalyses of the Coleman data failed to alter his original finding that differences in school resources have little relationship to achievement. However, two major weaknesses in Coleman's approach were identified that have subsequently served as a point of departure for more recent school effects research. First, Coleman's work was largely based on an input-output model. Efforts were made to relate static characteristics of schools (e.g., science equipment, library books, teacher training) and students (e.g., race, SES) to student achievement. However, little attention was paid to organizational characteristics of schools and processes of schooling that have subsequently been found to be related to achievement.[23]

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[22] J. S. Coleman et al., *Equality of Educational Opportunity*, U.S. Government Printing Office, Washington, D. C., 1966.

A second criticism of the early input-output studies is that they relied on school level data, focusing on differences between schools. This approach overlooked the fact that "most differences in achievement . . . are found within schools."[24] Moreover, within-school achievement differences are often related to differential student access to instructional practices, teacher ability, etc.

More recent work on school effects has taken these criticisms into account. Indeed, research on effective schools indicates that students in schools with certain organizational and management characteristics achieve more than might be expected on the basis of background characteristics.[25] As a recent review of quantitative studies of school effectiveness notes, "there are significant differences in the amount of learning taking place in different schools and in different classrooms within the same schools, even among inner city schools, even after taking into account the skills and backgrounds that children bring to school."[26] Thus, as Brookover argues, the effects of school organization/management practices have been largely independent of race or class.[27]

The vast school effectiveness research literature has relied on several different research methods, yet has yielded surprisingly consistent results. Three studies are briefly described for illustrative purposes.

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[23] M. Cohen, "Instructional Management and Social Conditions in Effective Schools," in Allen Odden and James Webb (eds.), *School Finance and School Improvement*, Ballinger and Co., Cambridge, Mass., 1983.

[24] Ibid., p. 20.

[25] Ibid.

[26] R. J. Murnane, "Quantitative Studies of Effective Schools: What Have We Learned?" in Odden and Webb, 1983.

[27] W. G. Brookover et al., *School Social Systems and Student Achievement: Schools Can Make a Difference,* Praeger, New York, 1979.

A program evaluation by Armor et al. attempted to identify school and classroom policies that had been most successful in raising minority students' reading scores.[28] After examining 20 inner city Los Angeles schools participating in a special reading program, the researchers identified the following characteristics as associated with gains in reading: (1) teachers' sense of efficacy and high expectations for students, (2) orderly classrooms, (3) parent-teacher and parent-principal contact, (4) on-going in-service training with frequent informal consultation, (5) strong principal leadership coupled with teacher autonomy, and (6) teacher flexibility in adopting instructional approaches.

Using a case study approach, Brookover examined two pairs of elementary schools matched for SES, urban location, and racial composition.[29] After detailed observations and interviews, several differences were found between high and low achieving schools. High achieving schools (a) spent more time in direct instruction, (b) demonstrated higher staff commitment to student achievement, (c) did not use grouping practices that put low ceilings on academic expectations, (d) relied on competitive academic teams in addition to individual student work, (e) communicated high expectations for student achievement, (f) provided consistent appropriate reinforcement, and (g) had strong principals.

In a widely cited study, Weber examined four exemplary inner city elementary schools that surpassed national norms in reading achievement.[30] He found the following characteristics related to reading achievement: (a) strong school leadership; (b) high expectations for student performance; (c) orderly, purposeful environment; (d) an emphasis on reading achievement with specialized instructional approaches and personnel; (e) frequent monitoring and appropriate reinforcement of student progress.

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[28] D. Armor et al., *Analysis of the School Preferred Reading Program in Selected Los Angeles Schools*, The Rand Corporation, R-2007-LAUSD, 1976.

[29] Brookover et al.

[30] G. Weber, *Inner City Children Can Be Taught to Read: Four Successful Schools*, Council for Basic Education, Washington, D.C., 1971.

Achievement related variables cited in these three studies have also been found in several other studies of school effectiveness. One of the most consistently described characteristics of effective schools is strong instructional[31] and administrative leadership by the principal.[32] The principal sets the "tone" of the school by establishing focused goals, emphasizing academics, establishing rules for conduct and discipline, and providing a means for problem solving. Perhaps most important, the principal establishes the climate of attitudes and expectations about student and teacher behavior.

The notion of school "climate" or "culture" also emerges as central to effective schools. According to Purkey and Smith, academically effective schools are distinguished by their culture: "A structure, process and climate of values and norms that emphasize successful teaching and learning."[33] These values and norms are shared by students and staff and include the notion that both groups have responsibilities to each other and to the school. Teachers, for example, expect students to achieve and accept responsibility for helping them become achievers. Moreover, they are viewed by students as fair in their assessment of student behavior and achievement. Although little research has been done on students' attitudes, G. McKenna (the principal of Washington High School, Los Angeles) contends that achieving students first accept their role as students.[34] This implies acknowledging the authority of the school, defining their goal as achievement, and viewing positive behavior as a means to that goal. In disciplined, academically improving inner city schools, students and staff view themselves as interdependent.

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[31] G. R. Austin, *Process Evaluation: A Study of Outliers*, Maryland State Education Agency (S.E.A)., Baltimore, 1978.

[32] J. L. Spartz et al., *Delaware Educational Accountability System Case Studies: Elementary School grades 1-4*, Delaware Department of Public Instruction, Dover, 1977.

[33] S. Purkey and M. Smith, "Effective Schools: A Review," *The Elementary School Journal*, Vol. 83, 1983, p. 442.

[34] G. McKenna, personal communication, 1984.

Indeed, the whole concept of school culture rejects the notion of static variables related to student outcomes. Instead, schools are seen as dynamic social systems composed of interrelated factors.[35] Overall school management policies influence classrooms, which in turn influence the climate of the school. Purkey and Smith have taken this approach in categorizing lists of variables related to achievement. The Purkey and Smith framework consists of *process* variables and *organization/structural* variables.[36] The latter reflect operational and management approaches, which can be set in place by bureaucratic means. The process variables are interaction variables, which define how the organizational variables are set in motion. Elements of this framework are described below.

Organizational and Structural Variables

- *School-site management*--management practices that provide leeway for school administrators and staff to implement changes to increase academic performance.
- *Instructional leadership*--steps taken by the principal, other administrators, and senior faculty members to enhance teacher performance, course content, etc.
- *Staff stability*--policies that prevent attrition among successful staff members and reduce the destructive effect of frequent transfers.
- *Curriculum articulation*--the development of an integrated curriculum that emphasizes academic skills.
- *School-wide staff development*--means taken to communicate knowledge, skills, and teaching techniques, as well as to promote positive attitudes, staff cooperation, and esprit de corps.

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[35] Brookover et al., 1979.
[36] Purkey and Smith, 1983.

- *Parental involvement and support*--steps taken to insure that parents are informed about the school's goals and student's responsibilities such as *homework*.
- *School-wide recognition of academic success*--those ceremonies, symbols, and official recognition honoring academic achievements.
- *Maximized learning time*--measures taken to maximize the time spent on academic activities and to minimize distractions or disruptions in class, halls, and school yard.
- *District support*--efforts made by the district to support the schools' focus on achievement.

Process Variables

- *Collaborative planning and collegial relationships*--the development of intelligent sharing and consensus, unity, and commonality among school staff regarding goals and educational processes.
- *Sense of community*--the reduction of alienation and development of a sense of achievement, which may be built through ceremonies, rules, and symbols.
- *Clarity of goals and high expectations*--the identification of a few important goals that permit schools to direct their resources and shape their functioning toward realizing these goals and monitoring individual pupil progress toward them.
- *Order and discipline*--the communication of the seriousness with which the school takes its mission and provides an environment conducive to learning.

Despite consistency in findings, which increases its validity, the vast effective schools research suffers from important methodological weaknesses. First, academic success as defined by most studies still reflects a lower level of achievement than would be defined for most middle class schools. Moreover, the outlier approach often results in confounds between outcomes and student background characteristics. Case studies tend to provide rich data, but the small samples increase the probability that characteristics distinguishing effective or ineffective schools are due to chance.[37]

There are several other limitations of the research that reduce our understanding of the processes by which schools improve achievement. First, most of the research has been conducted at the elementary level. Given the organizational and structural differences between elementary and secondary schools, generalizations to high schools are difficult. Moreover, studies to date specify relationships between school practices and student outcomes. However, there is little basis for causal inference. Finally, the paucity of longitudinal studies makes it impossible to determine whether and how achievement effects are sustained over time.[38]

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[37] Purkey and Smith, 1983.

[38] Cohen, 1983; Murname, 1983.

II. BEHAVIOR MODIFICATION STRATEGIES

Behavior theorists contend that poor school and classroom management inadvertently perpetuate problems of student misbehavior and nonstudy behavior.[1] According to these theorists, misbehavior is often due to the teachers' inappropriate or noncontingent use of reinforcers in the classroom. Specifically, in dealing with unruly classes, teachers frequently ignore desired behavior (e.g., attention to academic tasks) and attend to undesired behaviors (e.g., talking out of turn). In so doing, teachers reinforce the undesired behavior.[2]

Many studies have shown that when teachers are trained to use contingent reinforcement, they can alter achievement-related and disruptive behavior in elementary classrooms.[3] Teacher praise, approval, and positive attention have been found to be extremely powerful reinforcers. Tokens, which are exchanged by students for gifts, money, or classroom privileges have also been used as effective reinforcers in a various studies.[4] However, educators have often criticized this practice as bribery and don't recommend it for use in regular instructional programs.[5] To discourage undesired behaviors,

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[1] C. H. Madsen, W. C. Becker, and D. R. Thomas, "Rules, Praise and Ignoring: Elements of Elementary Classroom Control," *JABA*, Vol. 1, 1968, p. 139; also K. D. O'Leary, and S. G. O'Leary, *Classroom Management: The Successful Use of Behavior Modification*, Pergamon Press, New York, 1972.

[2] R. V. Hall, M. Panyan, D. Rabon, and M. Broden, "Instructing Beginning Teachers in Reinforcement Procedures Which Will Improve Classroom Control," *JABA*, Vol. 1, 1968, p. 315.

[3] T. Ayllon, S. Garbers, and K. Pisor, "The Elimination of Discipline Problems Through a Combined Home-School Motivational System," *Behavior Therapy*, Vol. 6, 1975, p. 616; also, W. C. Becker, C. J. Madsen, C. R. Arnold, and D. R. Thomas, "The Contingent Use of Teacher Attention and Praise in Reducing Classroom Behavior Problems," *J. Spec. Ed.*, Vol. 1, 1967, p. 287.

[4] K. D. O'Leary, W. C. Becker, M. B. Evans, and R. A. Sandargus, "A Token Reinforcement Program in a Public School: A Replication and Systematic Analysis," *JABA*, Vol. 2, 1969, p. 3.

[5] R. S. Drabman, and R. D. Tucker, "Why Classroom Token Economies Fail," *J. of School Psychol.*, Vol. 12, 1974, p. 178.

O'Leary and O'Leary recommend ignoring mildly negative behavior and subtly reprimanding students in private for more serious disruptive behavior, or sending them out of the group.

Although various complex behavior modification procedures exist, below are those frequently used to increase positive behavior:

- *Clear definition of rules and directions.* Madsen[6] found that clearly defined rules were a necessary but not sufficient condition for altering classroom misbehavior. In addition to making explicit rules, students must be consistently reinforced for following them.
- *Modeling* simply refers to showing the student how to perform a behavior, and asking him to repeat the behavior.
- *Shaping* is the act of reinforcing successive approximations to the desired behavior.
- *Programmed instruction* arranges academic materials in a sequence of small steps; provides feedback; and allows the student to progress at his own rate.

Despite the success of behavior shaping principles, this approach continues to be criticized for several reasons. First, teachers and administrators are often reluctant to adopt behavior modification strategies because of their perception that they "overdetermine" students' behavior.[7] Furthermore, many teachers simply find the procedures incompatible with their notions of classroom management, hence too difficult to implement. In particular, they find the practice of ignoring mildly disruptive behavior to be unacceptable. It is likely that these concerns will be nullified as increasing numbers of teachers are trained to use the strategies with positive results. Moreover, strategies are being developed that involve home-based reinforcement of school behaviors.[8] These strategies make parents the primary gatekeepers for reinforcers and relieve the teachers of some of this burden. Finally, educators and theorists alike have questioned whether behavior modification strategies can produce positive results on a school-wide basis.

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[6] Madsen et al., 1968.

[7] O'Leary and O'Leary, 1972.

[8] B. Atkeson and R. Forehand, "Home-Based Reinforcement Programs Designed to Modify Classroom Behavior: A Review and Methodological Evaluation," *Psychol. Bulletin*, Vol. 86, 1979, p. 1298. See also R. Barth, "Home-Based Reinforcement of School Behavior: A Review and Analysis," *Rev. of Ed. Research*, Vol. 49, 1979, p. 436.

School-wide implications of behavior modification strategies are not commonly cited in the literature. However, the study described below supports the potential effectiveness of this approach. Boegli and Wasik (1978)[9] demonstrated that a school-wide intervention could be successfully implemented using a token economy. Teachers identified study and social behaviors they wanted reinforced or extinguished. They then received extensive staff development in behavior modification procedures and implemented them in self-contained classrooms. By the end of the school year, the 460 K-6th graders evidenced an overall decline in disruptive behavior, an increase in the rate of reading and math achievement, an a decrease in suspensions. Moreover, teachers were more satisfied with their classroom management and the school evidenced a lower teacher turnover rate than in the previous year.

Interestingly, many delinquency prevention strategies cited earlier in this paper are based on principles of behavior modification. Specifically, positive reinforcement, explicit rules and programmed learning have been used to increase achievement related behavior and to decrease misbehavior.[10] In addition, the team learning approach cited by Gottfredson, and Hawkins and Lam[11] is derived from a basic behavior modification strategy which make group outcomes dependent on individual student performance.[12] Thus, despite a general resistance to behavior modification as a concept, schools often use the principles and strategies with considerable success.

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[9] R. G. Boegli and B. H. Wasik, "Use of the Token Economy System to Intervene on a School-Wide Level," *Psychol. in the Schools, 15*, 1978.

[10] Hawkins and Lam, 1983; Wayson and Lasley, 1984; P. Willis, *Learning to Labour*, Saxon House, Farnborough, England, 1977.

[11] Gottfredson, 1982; Hawkins and Lamm, 1983.

[12] H. Barrish, M. Saunders, and M. Wolf, "Good Behavior Game: Effects of Individual Contingencies for Group Consequences on Disruptive Behavior in a Classroom," *JABA*, 2, 1969.

III. IMPLICATIONS FOR SCHOOL LEVEL INTERVENTION

The research described above has reflected diverse purposes and has relied on divergent methods. Nevertheless, it has produced remarkable consistency in specifying school-based strategies for preventing delinquency and delinquency-related behaviors.

Despite the apparent effectiveness of the strategies, caution should be used in relying on them as the basis for intervention. With the notable exception of behavior modification, most of the strategies have limited theoretical underpinnings. Thus, we have no information about the conditions under which the strategies will be most effective nor of the interactive effect of combining them.

Furthermore, the existence of delinquency prevention strategies does not imply that schools will implement them. An intervention based on the strategies described above would be extremely difficult to implement. Rather than adapt some new teaching technique or sending individual students to counseling, the intervention would require school-wide changes in management, organization, and classroom practices. Even if school principals were willing to embark on such a venture, the "loosely coupled" nature of schools would militate against change.[1] Specifically, the weak linkages between school administration and classroom operations suggest that strong leadership would not be sufficient to implement delinquency prevention strategies as outlined above.

Indeed, research on the implementation of innovation suggests that teachers are the locus of real change in the school. As Berman and McLaughlin point out, change doesn't occur unless teachers have a sense of "ownership" of the implementation strategies and can adapt them to their teaching environment.[2]

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[1] K. E. Weick, "Educational Organization as Loosely Coupled Systems," *Administrative Science Quarterly, 21,* 1976.

[2] P. Berman and M. McLaughlin, *Federal Programs Supporting Educational Change*, The Rand Corporation, R-1589-HEW, 1977.

Another hindrance to implementing delinquency prevention strategies is teachers' perceptions of their roles. Since the mid-60s, schools had numerous programs for groups potentially at a disadvantage within the education system: the poor, the low achievers, the limited English speakers, and the handicapped.[3] The responsibility for carrying out these programs has rested largely with teachers. Yet many teachers "resist" teaching "special" groups of children, believing that poor performance is due largely to background characteristics.[4] Vinter and Sarri found that more than half the teachers in their sample attributed student misbehavior to the child's "nature," and slightly less than half believed misbehavior to be due to family background.[5] Less than 10 percent related behavior to the teachers' classroom practices. Given the lack of responsibility and the lack of efficacy teachers often feel in regard to low achieving, misbehaving students, we might expect them to resist delinquency prevention interventions.

An intervention based on the strategies described earlier would be collaborative, and would involve joint decisionmaking about school goals and processes for achieving them. To the extent that delinquency prevention is seen as serving school-wide rather than special interest goals, and to the extent that the intervention is based on shared, consensual power, a school-based program might be a possibility.

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[3] J. Kimbrough and P. Hill, *The Aggregate Effects of Federal Education Programs*, The Rand Corporation, R-2638-ED, 1981.

[4] J. Kimbrough and P. Hill, *Problems of Implementing Multiple Categorical Education Programs*, R-2957-ED, The Rand Corporation, 1983.

[5] R. Vinter and R. Sarri, President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report; Juvenile Delinquency and Youth Crime, Washington, D.C., 1977.*

CHAPTER X

THE ECONOMICS OF EARLY INTERVENTION vs. LATER INCARCERATION

by

C. Peter Rydell

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I. INTRODUCTION

Criminal justice research during the late 1970s and early 1980s showed that a few offenders commit a disproportionate share of all crimes (Petersilia, Greenwood, and Lavin, 1977; Chaiken and Chaiken, 1982). That finding implies that crime could be reduced by focusing crime control resources on high-rate offenders. This analysis compares two methods of doing that: (1) additional incapacitation of high-rate offenders during their criminal careers to reduce their opportunity to commit crimes (selective incapacitation), and (2) treatment of high-rate offenders at the start of their criminal careers to reduce their propensity to commit crimes (early intervention).

Selective incapacitation gives convicted high-rate offenders longer sentences than low-rate offenders, thereby maximizing the amount of crime prevented per prison space (Greenwood and Abrahamse, 1982). The idea's obvious merit is, however, greatly diminished by the difficulties of predicting which offenders are high-rate (Chaiken and Rolph, 1980; and Farrington, 1983). Falsely categorizing an offender as high risk not only reduces the efficiency of selective incapacitation as a crime control program, but it also opens the program to criticism that it is unjustly punishing the misclassified offender.

Early intervention treats high-rate offenders at the start of their criminal careers to reduce offense rates throughout those careers. The most recent overview of this strategy is by Greenwood and Zimring (1985). Examples of early intervention programs with documented successes in reducing offense rates are Headstart programs (see Berrueta-Clement et al., 1984), parent training programs (see Patterson, Chamberlain, and Reid, 1982), and delinquency prevention programs (see Lipsey, 1984).

As in selective incapacitation, the difficulty of predicting high-rate offenders reduces the effectiveness of the early intervention strategy. However, early intervention cannot be criticized for delivering unjust punishments because it offers help rather than punishment to predicted high-rate offenders. Nevertheless, early intervention may also be unjust: Participation in an early intervention program may "label" children not yet entrenched in chronic delinquency, and low-rate offenders, if not served, will have been denied access to programs that would have helped their lives.

This analysis does not attempt a complete comparison of the selective incapacitation and early intervention strategies. Rather it examines the ability of the two strategies to reduce crime and the cost of the strategies to the criminal justice system. In particular, it makes no attempt to estimate the "social costs" of falsely identifying low-rate offenders as high-rate offenders. The analysis does, however, keep track of such false identification in its accounts of program outcomes, enabling readers to do their own assessment of those costs.

Even within its defined scope, the analysis is merely exploratory. Its purpose is to point the way to needed research on comparisons and is in no sense definitive. At every step of the analysis an attempt has been made to use the best available information, but "best" in my opinion is not necessarily the same in the reader's opinion; in any case, all too frequently the best available information is not very good. A host of assumptions and estimates can and should be challenged, first with sensitivity analyses that indicate where improvements are most needed and second with research that makes the improvements.

The analysis consists of three steps. First, establish the base case resulting from current criminal justice policies. Second, estimate the crime reduction achievable through increased prison terms for adult offenders predicted to be high-rate offenders, and estimate the cost of the necessary increase in prison spaces. Third, determine how effective an early intervention program must be to reduce crime as much as the selective incapacitation program, and determine how much could be spent per person treated in the early intervention program without exceeding the cost of the selective incapacitation program.

In other words, rather than analyze the cost-effectiveness of specific early intervention programs (such as day care, parent counseling, drug abuse treatments, or vocational training) this analysis establishes cost and effectiveness benchmarks against which such specific programs can be evaluated. The benchmarks are the minimum reduction in offense rates that must be achieved and the maximum budget per treatment that can be spent if early intervention is to be as cost-effective as selective incapacitation.

Not surprisingly, the answer turns out to depend on the predictability of high-rate offenders. This analysis explores the consequences of two levels of predictability: first, that one-third of predicted high-rate offenders actually are high-rate offenders, and second, that one-half of predicted high-rate offenders actually are high-rate offenders. The lower estimate of predictability comes from Morris and Miller (1985), and the higher estimate of predictability comes from Greenwood and Abrahamse (1982).

The analysis finds that if the predictability of high-rate offenders is between one-third and one-half, then a selective incapacitation program reduces crime by 4.8 to 6.6 percent. To achieve that same reduction in crime, an early intervention program must reduce offense rates of treated offenders by 37 to 42 percent. Moreover, this analysis finds that the early intervention program can spend from $28,000 to $32,400 per person (total cost however long the treatment takes) and still cost no more than the selective incapacitation program.

CHARACTERISTICS OF THE CRIMINAL JUSTICE SYSTEM

This analysis focuses on the 35 million "index" crimes per year committed in the United States. Included in the index are the violent crimes of murder, forcible rape, robbery, and aggravated assault; and the property crimes of burglary, larceny-theft, motor vehicle theft, and arson (see Table 10.1).

Judged by arrest records (see Table 10.2), almost nine-tenths of those crimes are committed by offenders 13 through 37 years old, with almost one-third of the crimes committed by juvenile offenders (less than 18 years old). Such statistics provide the motivation for treatment programs that focus on young offenders, either treating juveniles to deflect criminal careers or lengthening the sentences of young adults whose juvenile records suggest they would be high-rate offenders if they were not incapacitated.

Our analyses estimate that juveniles commit crimes in larger groups than adults, on average (see Table 10.3); receive considerably shorter sentences if convicted of a crime (see Table 10.4); have slightly

Table 10.1

INDEX CRIMES AND ARRESTS BY TYPE OF CRIME: UNITED STATES, 1980[a]

Type of Crime	Crimes (thousands per year)	Arrests (thousands per year)	Ratio of Arrests to Crimes
Murder	23	19	.826
Forcible rape	160	29	.181
Robbery	1,138	139	.122
Aggravated assault	1,597	259	.162
Burglary	6,522	480	.074
Larceny-theft	23,810	1,124	.047
Motor vehicle theft	1,290	130	.101[b]
Arson	18	18	1.000
All index crimes	34,558	2,198	.064

SOURCE: Flanagan and McLeod (1983); Table 3.1, p. 292; Table 3.55, p. 354; and Table 4.4, p. 394.

[a] Total number of crimes estimated from the number of crimes reported to police (murder), the number of arrests (arson), or victimization surveys (all other types of crime).

[b] This impressive arrest rate for arson is an artifact of currently having no better way to estimate the number of arson crimes than by the number of arrests for arson.

Table 10.2

ARRESTS FOR INDEX CRIMES BY AGE OF OFFENDER: UNITED STATES, 1980

Age of Offender	Annual Arrests (thousands)	Population (millions)	Annual Arrests per 1000 People
Juvenile			
Under 13	98.1	43.8	2.2
13 through 17	691.4	19.6	35.3
Adult			
18 through 22	593.0	21.7	27.3
23 through 27	285.1	20.7	13.8
28 through 32	211.1	18.5	11.4
33 through 37	112.0	15.7	7.1
38 and older	207.3	87.7	2.4
All ages	2198.0	227.7	9.7

SOURCE: Flanagan and McLeod (1983); Table 4.4, p. 394; and Bureau of the Census, 1983a, Table 1, p. 9.

Table 10.3

OFFENDERS PER CRIME AND PROBABILITY OF ARREST PER OFFENSE: UNITED STATES, 1980

	Components of Arrests[a]			
Age of Offender	Annual Crimes (thousands)	Offenders per Crime	Probability of Arrest per Offense	Annual Arrests (thousands)
Juvenile	10,230	2.00	.0386	789.5
Adult	24,328	1.50	.0386	1408.5
All	34,558	1.65	.0386	2198.0

SOURCE: Total crime from Table 10.1; arrests by age of offender from Table 10.2; offenders per crime by age of offenders estimated by Frank Zimring's and Peter Greenwood's judgment based on the partial empirical evidence in Greenwood, Petersilia, and Zimring (1980, p. 9) and Reiss (1984, p. 37); and crimes by age of offender and probability of arrest per offense found by solving the following three equations:

$$A_j = C_j m_j q$$

$$A_a = C_a m_a q$$

$$C = C_j + C_a$$

where A = annual arrests, C = annual crimes, m = offenders per crime, q = probability of arrest per offense, j = subscript for juveniles, and a = subscript for adults.

[a] Annual arrests equals the product of annual crimes, offenders per crime, and the probability of arrest per offense.

Table 10.4

CONVICTED PERSONS UNDER CORRECTIONAL SUPERVISION: UNITED STATES, 1979

Type of Facility	Inmates (thousands)	Annual Commitments (thousands)	Average Length of Stay (years)
Juvenile			
Public facility	31.4[a]	65.4[b]	0.48
Private facility	28.7	39.9[b]	0.72
Total juvenile	60.1	105.3	0.57[c]
Adult			
Local jail	71.8	85.5[b]	0.84[d]
State prison	278.9	131.9	2.11[c]
Federal prison	22.5	10.9	2.06[c]
Total adult	373.2	228.3	1.63[c]

SOURCE: Flanagan and McLeod (1983, Table 6.9, p. 514; Table 6.11, p. 516; Table 6.14, p. 519; and Table 6.30, p. 542.

[a] Committed juveniles only, excludes those detained or voluntarily admitted.

[b] Estimated by the ratio of inmates to average length of stay.

[c] Estimated by the ratio of inmates to annual commitments.

[d] Estimated by assuming that inmates serving jail sentences of less than one year stay for one-half year on average, and that inmates serving jail sentences of more than one year stay for two years on average.

smaller probabilities of being committed to juvenile facility, jail, or prison if arrested (see Table 10.5); and cost slightly more per year to maintain in those facilities (see Table 10.6). Those differences by age of offender dictate that juveniles and adults be treated separately throughout this analysis.

The key features of the United States criminal justice system are summarized in Table 10.7. Offenders have about a 4 percent chance of being arrested per offense. Those arrested have about a 15 percent chance of being convicted and committed to a juvenile facility, jail, or prison; juveniles are committed for slightly over half a year, on average, and adults are committed for slightly over one and a half years, on average. The average annual cost for incapacitating an offender is about $20,000 in 1983 dollars.

CHARACTERISTICS OF OFFENDERS

The dominant fact about offenders, from the viewpoint of criminal justice policy, is that a fairly small proportion of offenders commit a large proportion of all crimes. Analyses of criminal careers--for example, Petersilia, Greenwood, and Lavin (1977); and Chaiken and Chaiken (1982)--have both documented this pattern and commented on the potential leverage it gives crime control programs.

Table 10.5

RATES AT WHICH ARRESTED PERSONS ARE COMMITTED
TO CORRECTIONAL INSTITUTIONS:
UNITED STATES, 1979-80

Age of Offender	Annual Arrests (thousands)	Annual Commitments (thousands)	Commitment Rate (ratio of commitments to arrests)
Juveniles	789.5	105.3	0.133
Adults	1408.5	228.3	0.162
All persons	2198.0	333.6	0.152

SOURCE: Tables 10.2 and 10.4.

Table 10.6

ANNUAL COST OF CORRECTIONAL SUPERVISION: UNITED STATES, 1979

Type of Facility	Annual Cost (millions)	Inmates (thousands)	Annual Cost per Inmate ($ per person)
Juvenile			
Public facility	518[a]	31.4	16,500
Private facility	442[a]	28.7	15,400
Total juvenile	960	60.1	15,970
Adult			
Local jail	1,006[b]	71.8	14,010
State prison	3,771	278.9	13,520
Federal prison	393	22.5	17,470
Total adult	5,170	373.2	13,850

SOURCE: Flanagan and McLeod (1983); Fig. 1.2, p. 3; Table 1.58, p. 129; Table 1.61, p. 132; and Table 6.14, p. 519.

[a] Estimated by number of inmates times cost per inmate.

[b] Total cost of local correctional activities times the ratio of convicted jail inmates to all jail inmates.

Table 10.7

SUMMARY CHARACTERISTICS OF THE U.S. INCAPACITATION SYSTEM

Age of Offender	Arrest Rate (probability per offense)	Commitment Rate (probabiity per arrest)	Average Commitment Duration (years)	Annual Cost per Inmate[a] (1983 $)
Juvenile	.0386	.133	0.57	21,927
Adult	.0386	.162	1.63	19,016
All Ages	.0386	.152	0.77	19,359

SOURCE: Tables 10.3, 10.4, 10.5, and 10.6.

[a] The national consumer price index was used to convert the 1979 $ in Table 10.6 into the 1983 $ in this table.

This analysis divides offenders into two groups, a high-rate group committing an estimated 273 crimes per year of street time, and a low-rate group committing about 24 crimes per year of street time (see Table 10.8). The large difference in those offense rates means that the two groups are treated very differently by the criminal justice system. Applying the Shinnar and Shinnar (1975) model of incapacitation effects (in Table 10.9) shows that 44 percent of juvenile high-rate offenders and 74 percent of adult high-rate offenders are incapacitated by the current system, but only 7 percent of juvenile low-rate offenders and 20 percent of adult low-rate offenders are incapacitated.

However, in spite of the large proportion of high-rate offenders who are incapacitated by the current criminal justice system, about 40,000 high-rate juveniles and almost 50,000 high-rate adults are *not* currently incapacitated (see Table 10.10); and those juvenile high-rate offenders commit 16 percent of all index crimes in the United States while those adult high-rate offenders commit 28 percent of all index crimes in the United States (see Table 10.11). The latter percentage motivates consideration of crime control programs that would selectively incapacitate high-rate adult offenders.

The fact that one-third of index crime is committed by juveniles motivates consideration of early intervention programs that would nip criminal careers in the bud. Moreover, the decline in offender rates as the population ages (2.5 percent of juveniles but only 1.8 percent of adults are offenders, see Table 10.12) suggests that offenders have a natural tendency to become nonoffenders. The task of early intervention programs is to accelerate this tendency.

Table 10.8

ANNUAL OFFENSE RATES BY TYPE OF OFFENDER IN THE UNITED STATES

Classification Method	Type of Offender	
	High-Rate	Low-Rate
Predicted type of offender[a]	154	69
Actual type of offender[b]	273	24

SOURCE: Greenwood and Abrahamse (1982). Table 4.7, p. 58, and Table 4.8, p. 59.

[a] Average of truncated mean offense rates for nondrug crimes by criminals convicted for burglary or robbery in California, Michigan, and Texas (see Greenwood and Abrahamse, 1982, p. 58). The states were weighted equally. The type of conviction was weighted by national incidence of arrests (see Table 10.1 in this study). Medium- and low-rate offense groups in the source study were averaged to become the low-rate offense group in this study.

[b] The rates for actual offense groups were estimated from the observed rates for predicted offense groups by solving the following pair of simultaneous equations:

$$u\lambda_h + (1 - u)\lambda_l = 154$$

$$w\lambda_h + (1 - w)\lambda_l = 69$$

where λ_h = offense rate of actual high-rate offenders, λ_l = offense rate of actual low-rate offenders, u = proportion of predicted high-rate offenders who are actual high-rate offenders (15 out of 29) and w = proportion of predicted low-rate offenders who are actual high-rate offenders (13 out of 71).
Greenwood and Abrahamse (1982), p. 59.

Table 10.9

MODEL OF THE EFFECTS OF INCAPACITATION

Offense Rate	Model Parameters: Offense Rate (λ)	Arrest Rate (q)	Commitment Rate (J)	Commitment Duration (S)	Proportion Street Time[a]	Proportion Offenders Incapacitated[b]
			Juveniles			
High-rate	273	.0386	.133	.57	.5559	.4441
Low-rate	24	.0386	.133	.57	.9344	.0656
			Adults			
High-rate	273	.0386	.162	1.63	.2644	.7356
Low-rate	24	.0386	.162	1.63	.8035	.1965

SOURCE: Shinnar and Shinnar (1975); and Tables 7 and 8.

[a] The "proportion street time"--the fraction of the time an offender is not incapacitated and is therefore able to commit crimes equals $1/(1 + \lambda qJS)$ in the Shinnar and Shinnar model (using the notation defined in the table headings above).

[b] The proportion of offenders incapacitated--one minus the proportion street time--equals $\lambda qJS/(1 + \lambda qJS)$.

Table 10.10

NUMBER OF OFFENDERS AND INCAPACITATED OFFENDERS BY TYPE OF OFFENDER IN THE UNITED STATES

Offense Rate	Total Offenders (thousands)	Proportion of Offenders Incapacitated	Incapacitated Offenders (thousands)	Free Offenders (thousands)
Juvenile Offenders				
High-rate	73.7[a]	.4441[b]	32.7	41.0
Low-rate	417.3[a]	.0656[b[	27.4	389.9
All	491.0[c]	.1224	60.1[d]	430.9
Adult Offenders				
High-rate	201.9[a]	.7356[b]	148.4	53.5
Low-rate	1143.9[a]	.1965[b]	224.8	919.1
All	1345.8[c]	.2773	373.2[d]	972.6

SOURCE: Shinnar and Shinnar (1975); Greenwood and Abrahamse (1982); and Tables 4, 7, and 8.

NOTE: Entries without footnotes were computed as a residual using the identities that offenders times proportion incapacitated equals incapacitated offenders and incapacitated plus free offenders, and incapacitated plus free offenders equals total offenders.

[a] Based on the evidence in Greenwood and Abrahamse (1982), p. 117, this analysis assumes that 15 percent of offenders are high-rate and 85 percent are low-rate.

[b] From Table 10.9.

[c] The total juvenile offenders, N_j, and total adult offenders, N_a, were calculated by solving the equations tions

$$(.15)(N_j)(.4441) + (.85)(N_j)(.0656) = 60.1$$

$$(.15)(N_a)(.7356) + (.85)(N_a)(.1965) = 373.2$$

[d] From Table 10.4.

Table 10.11

ANNUAL CRIME BY TYPE OF OFFENDER IN THE UNITED STATES

	Components of Crimes [a]				
	Total Offenders (thousands)	Annual Offense Rate	Proportion Street Time	Crimes per Offense[b]	Crimes (thousands)
			Juveniles		
High-rate	73.7	273	.5559	.500	5,620
Low-rate	417.3	24	.9344	.500	4,680
All	491.0	61[c]	.6878[d]	.500	10,300[e]
			Adults		
High-rate	201.9	273	.2644	.667	9,720
Low-rate	1143.9	24	.8035	.667	14,710
All	1345.8	61[c]	.4461[d]	.667	24,430[e]

SOURCE: Tables 10.3, 10.9, and 10.10.

[a] The product of the four components equals annual crimes.

[b] The inverse of the number of offenders per crime (see Table 10.3). In other words, because it takes two juveniles to commit a crime, on average, the number of crimes per juvenile offense is only one-half.

[c] Offense rates by offense-rate categories weighted by total offenders.

[d] Estimated as a residual. Note that for all juveniles and all adults the sum of proportion street time and proportion offenders incapacitated does not equal 1.0, as it does in applying the Shinnar and Shinnar model to the detailed types of offenders.

[e] The sum of juvenile and adult crimes per year in this table, 34730, does not exactly equal the amount in Table 10.1, 34558, because of round-off errors when applying the Shinnar and Shinnar model.

Table 10.12

OFFENDER RATE BY AGE GROUP IN THE UNITED STATES

Age Group	Population at Risk[a] (thousands)	Total Offenders (thousands)	Percent Offenders in Population at Risk
Juveniles	19,600	491	2.51
Adults	76,600	1346	1.76
All ages	96,200	1837	1.91

SOURCE: Tables 10.2 and 10.10.

[a] The "population at risk" of being offenders is assumed to be ages 13 through 37. See Table 10.2 for the approximation made by this assumption.

II. SELECTIVE INCAPACITATION OF PREDICTED HIGH-RATE OFFENDERS

Selective incapacitation programs give longer sentences to convicted offenders whose past records suggest that they are high-rate offenders. This analysis assumes that the entire juvenile record is required before it is possible to make an acceptable prediction of whether an offender is high rate (acceptable for the purpose of imposing a stiffer sentence, that is), and that a double length sentence is then imposed.

The prediction of high-rate adult offenders is not perfect, however, so we need estimates of the effects of doubling adult sentences for low-rate as well as high-rate offenders. Table 10.13 shows that the doubled sentences increase the proportion of adult offenders incapacitated by 14 percent for high-rate offenders and by 67 percent for low-rate offenders; and they decrease the annual crimes per offender (all offenders, not just those who are free) by 42 percent for high-rate offenders and by 16 percent for low-rate offenders.

When sentences are doubled, the big increases in incapacitation rates are for low-rate offenders, and the big decreases in crime rates are for high-rate offenders. This provides the incentive for selective incapacitation: If the increased sentences are targeted on high-rate offenders, more crime will be reduced per additional prison space.

ONE-THIRD PREDICTABILITY

Using the findings of Morris and Miller (1985), our analysis first assumes that one-third of the adult offenders predicted to be high-rate offenders actually are high-rate offenders. Tables 10.14 and 10.15 then derive the effect of doubling the sentences of predicted high-rate adult offenders. Table 10.14 presents the base case of what happens with normal sentences, but with the treatment group (adult, predicted high offense rate) separately identified. Table 10.15 is the same as Table 10.14 except for the treatment group lines, where the doubled sentences increase prison population by 33 percent and decrease

Table 10.13

EFFECT OF DOUBLING ADULT SENTENCES ON INCAPACITATION AND PROPORTIONS AND CRIME RATES

Situation	Type of Offender High-Rate	 Low-Rate
Proportion Offenders Incapacitated		
Adults, normal sentence	.7356	.1965
Adults, double sentence	.8477	.3285
Annual Crimes per Offender[a]		
Adults, normal sentence	48.14	12.86
Adults, double sentence	27.73	10.75

SOURCE: Tables 10.9 and 10.11.

NOTE: The estimates for adults subject to double incapacitation duration were made by replicating the compilations in Tables 10.9 and 10.12, doubling the parameter "S" from 1.63 years to 3.26 years.

[a] Annual crimes per offender equals the product of offense rate, proportion street time, and crimes per offense (see Table 10.11).

Table 10.14

BASE CASE A: ONE-THIRD PREDICTABILITY OF ADULT HIGH-RATE OFFENDERS

Age of Offender and Predicted Offense Rate	Type of Offender		
	High-Rate	Low-Rate	All
Total Offenders (thousands)[a]			
Juvenile, all rates	73.7	417.3	491.0
Adult, low-rate	134.6	1009.3	1143.9
Adult, high-rate	67.3	134.6	201.9
Total	275.6	1561.2	1836.8
Incapacitated Offenders (thousands)			
Juvenile, all rates	32.7	27.4	60.1
Adult, low-rate	99.0	198.3	297.3
Adult, high-rate	49.5	26.4	75.9
Total	181.2	252.1	433.3
Index Crimes (millions per year)			
Juvenile, all rates	5.62	4.68	10.30
Adult, low-rate	6.48	12.98	19.46
Adult, high-rate	3.24	1.73	4.97
Total	15.34	19.39	34.73

SOURCE: Tables 10.10, 10.11, and 10.13; and Morris and Miller (1984).

NOTE: Juvenile estimates same as in Tables 10.10 and 10.11. Adult estimates of incapacitation and crime obtained by multiplying total offenders by the "normal sentence" factors in Table 10.13.

[a] Total predicted high-rate adult of- fenders chosen to be equal to the number of actual high-rate adult offenders (201.9 thousand--i.e., 15 percent of all adult offenders). One-third of the predictions of high-rate adult offenders are assumed to be correct, following the results of Morris and Miller (1984).

Table 10.15

PLAN A: SELECTIVE INCAPACITATION OF ADULTS WITH PREDICTED HIGH OFFENSE RATES, ASSUMING ONE-THIRD PREDICTABILITY

Age of Offender and Predicted Offense Rate	Type of Offender			
	High-Rate	Low Rate	All	
Total Offenders (thousands)				
Juvenile, all rates	73.7	417.3	491.0	
Adult, low-rate	134.6	1009.3	1143.9	
Adult, high-rate	67.3	134.6	201.9	
Total	275.6	1561.2	1836.8	
Incapacitated Offenders (thousands)				
Juvenile, all rates	32.7	27.4	60.1	
Adult, low-rate	99.0	198.3	297.3	
Adult, high-rate	57.1	44.2	101.3	(up 33.4%)
Total	188.8	269.9	458.7	(up 5.9%)
Index Crimes (millions per year)				
Juvenile, all rates	5.62	4.68	10.30	
Adult, low-rate	6.48	12.98	19.46	
Adult, high-rate	1.87	1.45	3.32	(down 33.2%)
Total	13.97	19.11	33.08	(down 4.8%)

SOURCE: Tables 10.13 and 10.14.

NOTE: This table is the same as Table 10.14, except that the "double sentence" factors in Table 10.13 are used for the adults with high predicted offense rates.

crimes committed by 33 percent. The overall increase in prisoners is 5.9 percent, and the overall decrease in crime is 4.8 percent.

ONE-HALF PREDICTABILITY

Next, using the findings of Greenwood and Abrahamse (1982), our analysis assumes that one-half of the adult offenders predicted to be high-rate offenders actually are high-rate offenders. Tables 10.16 and 10.17 then repeat the analysis of the two previous tables, after changing the way that the treatment group is divided between high-rate and low-rate offenders.

As expected, the increased ability to target high-rate offenders means that prison populations do not increase as much (up only 5.7 percent instead of 5.9 percent) and that more crime is prevented (crime declines by 6.6 percent instead of only 4.8 percent).

Table 10.16

BASE CASE B: ONE-HALF PREDICABILITY OF ADULT HIGH-RATE OFFENDERS

Age of Offender and Predicted Offense Rate	Type of Offender		
	High-Rate	Low-Rate	All
Total Offenders (thousands)[a]			
Juvenile, all rates	73.7	417.3	491.0
Adult, low-rate	100.9	1043.0	1143.9
Adult, high-rate	101.0	100.9	201.9
Total	275.6	1561.2	1836.8
Incapacitated Offenders (thousands)			
Juvenile, all rates	32.7	27.4	60.1
Adult, low-rate	74.2	204.9	279.1
Adult, high-rate	74.3	19.8	94.1
Total	181.2	252.1	433.3
Index Crimes (millions per year)			
Juvenile, all rates	5.62	4.68	10.30
Adult, low-rate	4.86	13.41	18.27
Adult, high-rate	4.86	1.30	6.16
Total	15.34	19.39	34.73

SOURCE: Tables 10.10, 10.11, and 10.13; and Greenwood and Abrahamse (1982).

NOTE: Juvenile estimates same as in Tables 10.10 and 10.11. Adult estimates of incapacitation and crime obtained by multi- plying total offenders by the "normal sentence" factors in Table 10.13.

[a] As in base case A, the total predicted adult high-rate offenders is chosen to equal the number of actual adult high-rate offenders. Here, however, one-half of the predictions of high-rate adult offenders are assumed to be correct, following the results in Greenwood and Abrahamse (1982), p. 59.

Table 10.17

PLAN B: SELECTIVE INCAPACITATION OF ADULTS WITH PREDICTED HIGH OFFENSE RATES, ASSUMING ONE-HALF PREDICTABILITY

Age of Offender and Predicted Offense Rate	Type of Offender: High-Rate	Low-Rate	All	
Total Offenders (thousands)				
Juvenile, all rates	73.7	417.3	491.0	
Adult, low-rate	100.9	1043.0	1143.9	
Adult, high-rate	101.0	100.9	201.9	
Total	275.6	1561.2	1836.8	
Incapacitated Offenders (thousands)				
Juvenile, all rates	32.7	27.4	60.1	
Adult, low-rate	74.2	204.9	279.1	
Adult, high-rate	85.6	33.1	118.7	(up 26.1%)
Total	192.5	265.4	457.9	(up 5.7%)
Index Crimes (millions per year)				
Juvenile, all rates	5.62	4.68	10.30	
Adult, low-rate	4.86	13.41	18.27	
Adult, high-rate	2.80	1.08	3.88	(down 37.0%)
Total	13.28	19.17	32.45	(down 6.6%)

SOURCE: Tables 10.13 and 10.16.

NOTE: This table is the same as Table 10.16, except that the "double sentence" factors in Table 10.13 are used for the adults with predicted high offense rates.

III. EARLY INTERVENTION IN CRIMINAL CAREERS

Early intervention programs treat potential offenders at the start of their criminal careers and reduce the offense rate throughout their career. The reduction can result either from all treated offenders reducing their offense rates by the same proportion, or from a proportion of the potential offenders never to become offenders, while the offense rates of the remainder of the treatment group remain unchanged.

Trial and error calculations with the Shinnar and Shinnar (1975), model (see the notes to Table 10.9) reveal that to cut crime by as much as the selective incapacitation programs, early intervention must reduce offense rates by 37 percent if high-rate offenders are one-third predictable and by 42 percent if high-rate offenders are one-half predictable. Table 10.18 shows how much incapacitation rates and crime rates fall if offense rates are decreased by those percentages.

ONE-THIRD PREDICTABILITY

In contrast to the selective incapacitation program where only adults were affected, early intervention affects both juveniles and ultimately when treated juveniles have grown up) adults. The bottom two lines in each panel of Table 10.19, and subsequent tables, contain the treated populations--the offenders with predicted high offense rates. Comparing the results of reduced offense rate (Table 10.20) with the base case (Table 10.19), we find that, by design, index crime has fallen by the same 4.8 percent that it did under the comparable selective incapacitation program (see Table 10.15). Here, however, rather than increase by 5.9 percent, the number of incapacitated offenders has fallen by 4.3 percent. The reason why early intervention reduces prison populations is that lower offense rates lead to fewer crimes, fewer arrests, and consequently fewer commitments to correctional institutions. In other words, we assume that early intervention changes offense rates, but leaves such characteristics of the criminal justice system as arrest probabilities and commitment rates unchanged.

Table 10.18

EFFECT OF REDUCING THE OFFENSE-RATE, λ ON INCAPACITATION PROPORTIONS AND CRIME RATES

Situation	Type of Offender	
	High-Rate	Low-Rate
Proportion of Offenders Incapacitated		
Juvenile, normal λ	.4441	.0656
Adult, normal λ	.7356	.1965
Juvenile, λ reduced by 37%	.3348	.0423
Adult, λ reduced by 37%	.6368	.1334
Juvenile, λ reduced by 42%	.3166	.0391
Adult, λ reduced by 42%	.6174	.1243
Annual Crimes per Offender[a]		
Juvenile, normal λ	75.88	11.21
Adult, normal λ	48.14	12.86
Juvenile, λ reduced by 37%	56.90	7.33
Adult, λ reduced by 37%	41.60	8.69
Juvenile, λ reduced by 42%	53.93	6.79
Adult, λ reduced by 42%	40.00	8.13

SOURCE: Tables 10.9 and 10.11.

NOTE: The estimates with λ reduced by the indicated percentages were made by replicating the computations in Tables 10.9 and 10.11 using the revised λs (both high and low offense rates are reduced by the same percentage).

[a] Annual crimes per offender equal the product of offense rate, proportion street time, and crimes per offense (see Table 10.11).

Table 10.19

BASE CASE C: ONE-THIRD PREDICTABILITY OF ALL HIGH-RATE OFFENDERS

Age of Offender and Predicted Offense Rate	Type of Offender High-Rate	 Low-Rate	 All
Total Offenders (thousands)[a]			
Juvenile, low rate	49.1	368.2	417.3
Adult, low-rate	134.6	1009.3	1143.9
Juvenile, high-rate	24.6	49.1	73.7
Adult, high-rate	67.3	134.6	201.9
Total	275.6	1561.2	1836.8
Incapacitated Offenders (thousands)			
Juvenile, low rates	21.8	24.2	46.0
Adult, low-rate	99.0	198.3	297.3
Juvenile, high-rate	10.9	3.2	14.1
Adult, high-rate	49.5	26.4	75.9
Total	181.2	252.1	433.3
Index Crimes (millions per year)			
Juvenile, low rates	3.75	4.13	7.88
Adult, low-rate	6.48	12.98	19.46
Juvenile, high-rate	1.87	0.55	2.42
Adult, high-rate	3.24	1.73	4.97
Total	15.34	19.39	34.73

SOURCE: Tables 10.10, 10.11, and 10.18.

NOTE: Estimates of incapacitation and crime obtained by multiplying the number of offenders by the "normal λ" factors in Table 10.18.

[a] For comparability with the first selective incapacitation plan, the number of offenders predicted to be high-rate is chosen to equal the number of offenders offenders that actually are high-rate, and one-third of the predictions of high offense rates are assumed to be correct.

Table 10.20

PLAN C: EARLY INTERVENTION IN CAREERS OF PREDICTED HIGH-RATE OFFENDERS, ASSUMING ONE-THIRD PREDICTABILITY

Age of Offender and Predicted Offense Rate	Type of Offender: High-Rate	Low-Rate	All	
Total Offenders (thousands)				
Juvenile, low rate	49.1	368.2	417.3	
Adult, low-rate	134.6	1009.3	1143.9	
Juvenile, high-rate	24.6	49.1	73.7	
Adult, high-rate	67.3	134.6	201.9	
Total	275.6	1561.2	1836.8	
Incapacitated Offenders (thousands)				
Juvenile, low rates	21.8	24.2	46.0	
Adult, low-rate	99.0	198.3	297.3	
Juvenile, high-rate	8.2	2.1	10.3	(down 30.0%)
Adult, high-rate	42.9	18.0	60.9	(down 19.8%)
Total	171.9	242.6	414.5	(down 4.3%)
Index Crimes (millions per year)				
Juvenile, low rates	3.75	4.13	7.88	
Adult, low-rate	6.48	12.98	19.46	
Juvenile, high-rate	1.40	0.36	1.76	(down 27.3%)
Adult, high-rate	2.80	1.18	3.98	(down 19.9%)
Total	14.43	18.65	33.08	(down 4.8%)

SOURCE: Tables 10.18 and 10.19.

NOTE: This table is the same as Table 10.19, except that the factors in Table 10.18 resulting from reducing the offense rate, λ, by 37 percent are used for offenders with predicted high offense rates.

ONE-HALF PREDICTABILITY

Replicating the early intervention analysis under the assumption that one-half of the offenders predicted to be high-rate offenders actually are high-rate offenders yields the results in Tables 10.21 and 10.22. The reduction in crime is the same 6.6 percent as in the comparable selective incapacitation program, but incapacitated offenders now decrease rather than increase by 5.7 percent.

AVAILABLE TREATMENT BUDGET

Early intervention saves more money than selective incapacitation because fewer offenders are incapacitated. It not only avoids the increased prison populations that selective incapacitation would cause,[1] it also decreases prison populations below base case levels.

Subtracting the number of incapacitated offenders under early intervention programs from the number under the comparable selective intervention programs, we find that the differences are 44,200 and 49,500 prisoners in the United States. Multiplying by the annual cost per inmate, the annual incapacitation savings amount to $851 and $957 million a year for the entire United States (see Table 10.23).

Dividing those annual incapacitation savings by the number of juveniles treated annually in the early intervention programs, we find that the available budget is $28,800 per treatment in the one-third predictability case and $32,400 per treatment in the one-half predictability case (see Table 10.24). Those budgets are "available" in the sense that spending that much will make the early intervention programs cost exactly as much as the comparable selective incapacitation programs.

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[1] It is possible to design selective incapacitation programs that do not increase prison populations. One increases sentences for predicted high-rate offenders and decreases sentences for predicted low-rate offenders, holding the prison population constant. Crime decreases because of the differential effect of incapacitation on the two groups. Compared with such selective incapacitation programs, early intervention would save prison money only because of the reductions from the base case. However, constant-prison-population selective incapacitation programs do not reduce crime nearly as much as selective incapacitation programs that allow increasing prison populations, so this analysis does not consider them.

Table 10.21

BASE CASE D: ONE-HALF PREDICTABILITY OF ALL HIGH-RATE OFFENDERS

Age of Offender and Predicted Offense Rate	Type of Offender		
	High-Rate	Low-Rate	All
Total Offenders (thousands)[a]			
Juvenile, low rate	36.8	380.5	417.3
Adult, low-rate	100.9	1043.0	1143.9
Juvenile, high-rate	36.9	36.8	73.7
Adult, high-rate	101.0	100.9	201.9
Total	275.6	1561.2	1836.8
Incapacitated Offenders (thousands)			
Juvenile, low rates	16.3	25.0	41.3
Adult, low-rate	74.2	204.9	279.1
Juvenile, high-rate	16.4	2.4	18.8
Adult, high-rate	74.3	19.8	94.1
Total	181.2	252.1	433.3
Index Crimes (millions per year)			
Juvenile, low rates	2.81	4.27	7.08
Adult, low-rate	4.86	13.41	18.27
Juvenile, high-rate	2.81	0.41	3.22
Adult, high-rate	4.86	1.30	6.16
Total	15.34	19.39	34.73

SOURCE: Tables 10.10, 10.11, and 10.18.

NOTE: Estimates of incapacitation and crime obtained by multiplying the number of offenders by the "normal λ" factors in Table 10.18.

[a] For comparability with the second selective incapacitation plan, the number of offenders predicted to be high-rate offenders is chosen to equal the number of offenders that actually are high-rate offenders, and one-half of the predictions of high offense rates are assumed to be correct.

Table 10.22

PLAN D: EARLY INTERVENTION IN CAREERS OF PREDICTED HIGH-RATE OFFENDERS, ASSUMING ONE-HALF PREDICTABILITY

Age of Offender and Predicted Offense Rate	Type of Offender			
	High-Rate	Low-Rate	All	
Total Offenders (thousands)				
Juvenile, low rate	36.8	380.5	417.3	
Adult, low-rate	100.9	1043.0	1143.9	
Juvenile, high-rate	36.9	36.8	73.7	
Adult, high-rate	101.0	100.9	201.9	
Total	275.6	1561.2	1836.8	
Incapacitated Offenders (thousands)				
Juvenile, low rates	16.3	25.0	41.3	
Adult, low-rate	74.2	204.9	279.1	
Juvenile, high-rate	11.7	1.4	13.1	(down 30.0%)
Adult, high-rate	62.4	12.5	74.9	(down 20.4%)
Total	164.6	243.8	408.4	(down 5.7%)
Index Crimes (millions per year)				
Juvenile, low rates	2.81	4.27	7.08	
Adult, low-rate	4.86	13.41	18.27	
Juvenile, high-rate	1.99	0.25	2.24	(down 30.4%)
Adult, high-rate	4.04	0.82	4.86	(down 21.1%)
Total	13.70	18.75	32.45	(down 6.6%)

SOURCE: Tables 10.18 and 10.21.

NOTE: This table is the same as Table 10.21, except that the factors in Table 10.18 resulting from reducing the offense rate, λ, by 42 percent are used for offenders with predicted high offense rates.

Table 10.23

SAVINGS FROM REDUCTED INCAPACITATION UNDER EARLY INTERVENTION PLANS

	Incapacitated Offenders (thousand)				
Age of Offender	With Selective Incapacitation	With Early Intervention	Reduction	Annual Cost per Inmate (thousands of 1983 $)	Annual Budget Savings (millions of 1983 $)
		Plans A and C (one-third predictability)			
Juvenile	60.1	56.3	3.8	21.9	83.2
Adult	398.6	358.2	40.4	19.0	767.6
All ages	458.7	414.5	44.2	NA	850.8
		Plans B and D (one-half predictability)			
Juvenile	60.1	54.4	5.7	21.9	124.8
Adult	397.8	354.0	43.8	19.0	832.2
All ages	457.9	408.4	49.5	NA	957.0

SOURCE: Tables 10.7, 10.15, 10.17, 10.20, and 10.22.

Table 10.24

BUDGET AVAILABLE FOR EARLY INTERVENTION

Item	Amount
Plan C (one-third predictability)	
Annual savings from reduced incapacitation (millions of 1983 $)	850.8
Annual number of juveniles treated (thousands)[a]	29.5
Budget available per treatment (1983 $)	28,800
Plan D (one-half predictability)	
Annual savings from reduced incapacitation (millions of 1983 $)	957.0
Annual number of juveniles treated (thousands)[a]	29.5
Budget available per treatment (1983 $)	32,400

SOURCE: Tables 10.2, 10.11, and 10.24; and Farrington (1983).

[a] There are 19.6 million juveniles in a five-year cohort (see Table 2), so there are 3.9 million juveniles in an annual cohort. Of these, 2.51 percent, or 98.4 thousand, will become offenders (see Table 10.11). We want early intervention to focus on the 15 percent of offenders who are high-rate offenders (15 percent of 98.4 thousand is 14.75 thousand). However, using Farrington's finding (1983, p. 98) that only about half of predicted juvenile delinquents become juvenile delinquents, we double the treatment group size to 29.5 thousand to ensure that we will treat 15 percent of the offenders. (Recall, however, that because of imperfect predictability, not all of the offenders treated are high-rate offenders.)

IV. CONCLUSIONS

There are two major differences between early intervention programs and selective incapacitation programs that achieve the same reduction in crime. First, the selective incapacitation programs reduce only adult crime, and the early intervention programs reduce both juvenile and adult crimes (see Table 10.25). Second, the selective incapacitation programs increase prison populations, and the early intervention programs decrease them (see Table 10.26).

To achieve the same 4.8 percent reduction in crime as selective incapacitation (assuming high-rate offenders are one-third predictable), early intervention must reduce offense rates of treated offenders by 37 percent. To achieve the 6.6 percent reduction in crime that selective incapacitation causes under one-half predictability of high-rate

Table 10.25

PERCENT CHANGE IN INDEX CRIME

Age of Offender	Predictability of High-Rate Offenders: One-Third	One-Half
Selective Incapacitation		
Juvenile	0.0	0.0
Adult	-6.8	-9.3
All ages	-4.8	-6.6
Early Intervention		
Juvenile	-6.4	-9.5
Adult	-4.1	-5.3
All ages	-4.8	-6.6

SOURCE: Tables 10.15, 10.17, 10.20, and 10.22.

Table 10.26

PERCENT CHANGE IN
INCAPACITATED OFFENDERS

Age of Offender	Predictability of High-Rate Offenders: One-Third	Predictability of High-Rate Offenders: One-Half
Selective Incapacitation		
Juvenile	0.0	0.0
Adult	+6.8	+6.6
All ages	+5.9	+5.7
Early Intervention		
Juvenile	-6.3	-9.5
Adult	-4.0	-5.1
All ages	-4.3	-5.7

SOURCE: Tables 10.15, 10.17, 10.20, and 10.22.

offenders, early intervention must reduce offense rates of treated offenders by 42 percent. If the savings[1] from reduced prison populations are spent on the early treatments, then the early intervention programs can spend $28,800 and $32,400 per treatment, respectively (see Table 10.27).

Among the criticisms that can be made of this paper's analysis, three stand out as fruitful points of departure for future research. First, in common with all applications of the Shinnar and Shinnar (1975) model, this analysis assumes that incapacitation neither deters free offenders from committing crime nor rehabilitates offenders so they commit fewer crimes per year when they are once again free. The additional reductions in crime caused by selective incapacitation through these effects should be estimated in a more complete analysis. Second, the possibility that early intervention programs differentially

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[1] About half the savings comes from not increasing prison populations with a selective incapacitation program, and the other half comes from reducing prison populations with the early intervention program.

Table 10.27

CHARACTERISTICS OF EARLY INTERVENTION PROGRAMS THAT HAVE THE SAME EFFECTIVENESS AND COST AS SELECTIVE INCAPACITATION PROGRAMS

	Predictability of High-Rate Offenders	
Characteristic	One-Third	One-Half
Required reduction in offense rate (%)	37	42
Available budget per treatment (1983 $)	28,800	32,400

SOURCE: Tables 10.19 and 10.24.

affect high and low offense rates should be explored. The present analysis assumes that early intervention reduces the offense rates of high-rate and low-rate offenders (in the treatment group) by the same proportion.

Finally, although this paper's static analysis is a necessary first step, the real problem is dynamic. During the next decade, the population in the crime-prone ages will decline by at least 10 percent because of the "baby bust" a decade ago. This demographic decline in crime will interact with crime control programs in ways that are not understandable from a static perspective. Rather, a dynamic simulation model is needed that traces effects year by year into the future. Such an analysis could lead to a combined strategy of crime control where the prison spaces vacated by the baby bust during the next decade are utilized by a selective incapacitation program, while an early intervention program starting today will help reduce crime a decade from now when the crime-prone population starts to grow again.

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